WATER CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS
SUBCHAPTER A. PURPOSE AND POLICY

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(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and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

(c) This restatement shall not in any way make any changes in the substantive laws of the State of Texas.

(d) Laws of a local or special nature, such as statutes creating various kinds of conservation and reclamation districts, are not included in, or affected by, this code. The legislature believes that persons interested in these local and special laws may rely on the session laws and on compilations of these laws.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 1.002. CONSTRUCTION OF CODE. (a) 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.

(b) In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of this code in which the reference appears.

(c) A reference in a law to a statute or part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of the statute.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 74, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 715, Sec. 1, eff. Sept. 1, 1995.

Sec. 1.003. PUBLIC POLICY. It is the public policy of the state to provide for the conservation and development of the state's natural resources, including:

(1) the control, storage, preservation, and distribution of the state's storm and floodwaters and the waters of its rivers and streams for irrigation, power, and other useful purposes;

(2) the reclamation and irrigation of the state's arid, semiarid, and other land needing irrigation;

(3) the reclamation and drainage of the state's overflowed land and other land needing drainage;

(4) the conservation and development of its forest, water, and hydroelectric power;

(5) the navigation of the state's inland and coastal waters;

(6) the maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources;

(7) the voluntary stewardship of public and private lands to benefit waters of the state; and

(8) the promotion of rainwater harvesting for potable and nonpotable purposes at public and private facilities in this state, including residential, commercial, and industrial buildings.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1975, 64th Leg., p. 925, ch. 344, Sec. 1, eff. June 19, 1975.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 1, eff. June

15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.01, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1311 (H.B. 3391), Sec. 7, eff. September 1, 2011.

Sec. 1.004. FINDINGS AND POLICY REGARDING LAND STEWARDSHIP. (a) The legislature finds that voluntary land stewardship enhances the efficiency and effectiveness of this state's watersheds by helping to increase surface water and groundwater supplies, resulting in a benefit to the natural resources of this state and to the general public. It is therefore the policy of this state to encourage voluntary land stewardship as a significant water management tool.

(b) "Land stewardship," as used in this code, is the voluntary practice of managing land to conserve or enhance suitable landscapes and the ecosystem values of the land. Land stewardship includes land and habitat management, wildlife conservation, and watershed protection. Land stewardship practices include runoff reduction, prescribed burning, managed grazing, brush management, erosion management, reseeding with native plant species, riparian management and restoration, and spring and creek-bank protection, all of which benefit the water resources of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 2, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.02, eff. September 1, 2007.

TITLE 2. WATER ADMINISTRATION
SUBTITLE A. EXECUTIVE AGENCIES
CHAPTER 5. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 5.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Executive director" means the executive director of

the Texas Commission on Environmental Quality.

(4) "Clean coal project" means the installation of one or more components of the coal-based integrated sequestration and hydrogen research project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project. The term includes the construction or modification of a facility for electric generation, industrial production, or the production of steam as a byproduct of coal gasification to the extent that the facility installs one or more components of the FutureGen project.

(5) "Coal" has the meaning assigned by Section 134.004, Natural Resources Code.

(6) "Component of the FutureGen project" means a process, technology, or piece of equipment that:

(A) is designed to employ coal gasification technology to generate electricity, hydrogen, or steam in a manner that meets the FutureGen project profile;

(B) is designed to employ fuel cells to generate electricity in a manner that meets the FutureGen project profile;

(C) is designed to employ a hydrogen-fueled turbine to generate electricity where the hydrogen is derived from coal in a manner that meets the FutureGen project profile;

(D) is designed to demonstrate the efficacy at an electric generation or industrial production facility of a carbon dioxide capture technology in a manner that meets the FutureGen project profile;

(E) is designed to sequester a portion of the carbon dioxide captured from an electric generation or industrial production facility in a manner that meets the FutureGen project profile in conjunction with appropriate remediation plans and appropriate techniques for reservoir characterization, injection control, and monitoring;

(F) is designed to sequester carbon dioxide as part of enhanced oil recovery in a manner that meets the FutureGen project profile in conjunction with appropriate techniques for reservoir characterization, injection control, and monitoring;

(G) qualifies for federal funds designated for the FutureGen project;

(H) is required to perform the sampling, analysis, or research necessary to submit a proposal to the United States

Department of Energy for the FutureGen project; or

(I) is required in a final United States Department of Energy request for proposals for the FutureGen project or is described in a final United States Department of Energy request for proposals as a desirable element to be considered in the awarding of the project.

(7) "FutureGen project profile" means a standard or standards relevant to a component of the FutureGen project, as provided in a final or amended United States Department of Energy request for proposals or contract.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.001, eff. Aug. 12, 1991.
Amended by:
Acts 2005, 79th Leg., Ch. 1097 (H.B. 2201), Sec. 6, eff. June 18, 2005.

Sec. 5.002. SCOPE OF CHAPTER. The powers and duties enumerated in this chapter are the general powers and duties of the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of this code and other laws of this state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

SUBCHAPTER B. ORGANIZATION OF THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Sec. 5.011. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide an organizational structure for the commission that will provide more efficient and effective administration of the conservation of natural resources and the protection of the environment in this state and to define the duties, responsibilities, authority, and functions of the commission and the executive director.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.003, eff. Aug.

12, 1991.

Sec. 5.012. DECLARATION OF POLICY. The commission is the agency of the state given primary responsibility for implementing the constitution and laws of this state relating to the conservation of natural resources and the protection of the environment.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.004, eff. Aug. 12, 1991.

Sec. 5.013. GENERAL JURISDICTION OF COMMISSION. (a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;

(2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;

(3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;

(4) the determination of the feasibility of certain federal projects;

(5) the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams;

(6) conduct of the state's hazardous spill prevention and control program;

(7) the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;

(8) the administration of a portion of the state's injection well program;

(9) the administration of the state's programs involving underground water and water wells and drilled and mined shafts;

(10) the state's responsibilities relating to regional waste disposal;

(11) the responsibilities assigned to the commission by Chapters 361, 363, 382, 401, 505, 506, and 507, Health and Safety Code; and

(12) any other areas assigned to the commission by this code and other laws of this state.

(b) The rights, powers, duties, and functions delegated to the Texas Department of Water Resources by this code or by any other law of this state that are not expressly assigned to the board are vested in the commission.

(c) This section allocates among various state agencies statutory authority delegated by other laws. This section does not delegate legislative authority.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 14, Sec. 284(75), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.005, eff. Aug. 12, 1991; Acts 2001, 77th Leg., ch. 376, Sec. 3.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 1.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1067, Sec. 22, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. 1436), Sec. 2, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.01, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 32, eff. September 1, 2015.

Sec. 5.014. SUNSET PROVISION. The Texas Commission on Environmental Quality is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2023.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 167, Sec. 2.20(46), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.006, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 5.19(a), eff. Nov. 12, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 1.02, eff. Sept.

1, 2001.
Amended by:
Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 1.12, eff. July 10, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.02, eff. September 1, 2011.

Sec. 5.015. CONSTRUCTION OF TITLE. This title shall be liberally construed to allow the commission and the executive director to carry out their powers and duties in an efficient and effective manner.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

SUBCHAPTER C. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Sec. 5.051. COMMISSION. The Texas Natural Resource Conservation Commission is created as an agency of the state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.008, eff. Aug. 12, 1991.

Sec. 5.052. MEMBERS OF THE COMMISSION; APPOINTMENT. (a) The commission is composed of three members who are appointed by the governor with the advice and consent of the senate to represent the general public.

(b) The governor shall make the appointments in such a manner that each member is from a different section of the state.

(c) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 485, Sec. 1, eff. June 9, 1993; Acts 2001, 77th Leg., ch. 965, Sec. 1.03, eff. Sept. 1, 2001.

Sec. 5.053. ELIGIBILITY FOR MEMBERSHIP. (a) A person may not be a member of the commission if the person or the person's spouse:

(1) is registered, certified, licensed, permitted, or otherwise authorized by the commission;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving money from the commission;

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

(4) uses or receives a substantial amount of tangible goods, services, or money from the commission other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(b) In addition to the eligibility requirements in Subsection (a) of this section, persons who are appointed to serve on the commission for terms which expire after August 31, 2001, must comply at the time of their appointment with the eligibility requirements established under 33 U.S.C. Sections 1251-1387, as amended.

(c) Subsection (a)(2) does not apply to an employee of a political subdivision of this state. If the United States Environmental Protection Agency determines that there will be a negative impact on the State of Texas' National Pollution Discharge Elimination Systems delegation, this subsection does not apply.

Added by Acts 1995, 74th Leg., ch. 310, Sec. 1, eff. Aug. 28, 1995.
Amended by Acts 2001, 77th Leg., ch. 965, Sec. 1.04, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1278 (H.B. 3769), Sec. 1, eff. June 15, 2007.

Sec. 5.0535. REQUIRED TRAINING PROGRAM FOR COMMISSION MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission 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 legislation that created the commission;
(2) the programs operated by the commission;
(3) the role and functions of the commission;
(4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;
(5) the current budget for the commission;
(6) the results of recent significant internal and external audits of the commission;
(7) the requirements of:
(A) the open meetings law, Chapter 551, Government Code;
(B) the public information law, Chapter 552, Government Code;
(C) the administrative procedure law, Chapter 2001, Government Code; and
(D) other laws relating to public officials, including conflict-of-interest laws; and
(8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission 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.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.05, eff. Sept. 1, 2001.

Sec. 5.054. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission that a member:
(1) does not have at the time of taking office the qualifications required by Section 5.053(b);
(2) does not maintain during the service on the commission the qualifications required by Section 5.053(b);
(3) is ineligible for membership under Section 5.053(a), 5.059, or 5.060;
(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
(5) is absent from more than one-half of the regularly

scheduled commission meetings that the member is eligible to attend during each calendar year without an excuse approved by a majority vote of the commission.

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

(c) If the executive director or a member has knowledge that a potential ground for removal exists, the executive director or member shall notify the presiding officer of the commission of the potential ground. The presiding officer 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 director or another member of the commission shall notify the member of the commission with the most seniority, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.06, eff. Sept. 1, 2001.

Sec. 5.055. OFFICERS OF STATE; OATH. Each member of the commission is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.056. TERMS OF OFFICE. (a) The members of the commission hold office for staggered terms of six years, with the term of one member expiring every two years. Each member holds office until his successor is appointed and has qualified.

(b) A person appointed to the commission may not serve for more than two six-year terms.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.057. FULL-TIME SERVICE. Each member of the commission shall serve on a full-time basis.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.058. OFFICERS; MEETINGS. (a) The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

(b) The presiding officer may designate another commissioner to act for the presiding officer in the presiding officer's absence.

(c) The presiding officer shall preside at the meetings and hearings of the commission.

(d) The commission shall hold regular meetings and all hearings at times specified by a commission order and entered in its minutes. The commission may hold special meetings at the times and places in the state that the commission decides are appropriate for the performance of its duties. The presiding officer or acting presiding officer shall give the other members reasonable notice before holding a special meeting.

(e) A majority of the commission is a quorum.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.07, eff. Sept. 1, 2001.

Sec. 5.059. 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 a member of the commission and may not be a commission 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.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in an industry regulated by the

commission; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in an industry regulated by the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.08, eff. Sept. 1, 2001.

Sec. 5.060. LOBBYIST PROHIBITION. A person may not be a member of the commission or act as general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 167, Sec. 2.19(24), eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 965, Sec. 1.08, eff. Sept. 1, 2001.

Sec. 5.061. PROHIBITION ON ACCEPTING CAMPAIGN CONTRIBUTIONS. A member of the commission may not accept a contribution to a campaign for election to an elected office. If a member of the commission accepts a campaign contribution, the person is considered to have resigned from the office and the office immediately becomes vacant. The vacancy shall be filled in the manner provided by law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.03, eff. September 1, 2011.

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF THE COMMISSION

Sec. 5.101. SCOPE OF SUBCHAPTER. The powers and duties provided by this subchapter are the general powers and duties of the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of the code and other laws of this state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.102. GENERAL POWERS. (a) The commission has the powers to perform any acts whether specifically authorized by this code or other law or implied by this code or other law, necessary and convenient to the exercise of its jurisdiction and powers as provided by this code and other laws.

(b) The commission may call and hold hearings, receive evidence at hearings, administer oaths, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to its jurisdiction under this code and other laws and rules, orders, permits, licenses, certificates, and other actions adopted, issued, or taken by the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.103. RULES. (a) The commission shall adopt any rules necessary to carry out its powers and duties under this code and other laws of this state.

(b) The commission shall adopt reasonable procedural rules to be followed in a commission hearing. The executive director may recommend to the commission for its consideration any rules that he considers necessary.

(c) Rules shall be adopted in the manner provided by Chapter 2001, Government Code. As provided by that Act, the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of an agency. The commission shall follow its own rules as adopted until it changes them in accordance with that Act.

(d) The commission shall include as a part of each rule the commission adopts, and each proposed rule for adoption after the effective date of this subsection, a citation to the statute that grants the specific regulatory authority under which the rule is justified and a citation of the specific regulatory authority that will be exercised. If no specific statutory authority exists and the agency is depending on this section, citation of this section, or Section 5.102 or 5.013, is sufficient. A rule adopted in violation of this subsection is void.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 802, Sec. 1, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 1.09, eff. Sept. 1, 2001.

Sec. 5.1031. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission 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 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 negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.04, eff. September 1, 2011.

Sec. 5.1035. RULES REGARDING DRINKING-WATER STANDARDS. Before adopting rules regarding statewide drinking-water standards, the commission shall hold public meetings, if requested, at its regional offices to allow municipalities, water supply corporations, and other interested persons to submit data or comments concerning the proposed drinking-water standards.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.41, eff. Sept. 1, 1997.

Sec. 5.104. MEMORANDA OF UNDERSTANDING. (a) The commission and board by rule shall develop memoranda of understanding as necessary to clarify and provide for their respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission or board that is not expressly assigned to either the commission or board.

(b) The commission may enter into a memorandum of understanding with any other state agency and shall adopt by rule any memorandum of understanding between the commission and any other state agency.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.105. GENERAL POLICY. Except as otherwise specifically provided by this code, the commission, by rule, shall establish and approve all general policy of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.106. BUDGET APPROVAL. The commission shall examine and approve all budget recommendations for the commission that are to be transmitted to the legislature.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.107. ADVISORY COMMITTEES, WORK GROUPS, AND TASK FORCES. (a) The commission or the executive director may create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, for public information, or for any other matter that the commission or the executive director may consider appropriate.

(b) The commission shall identify affected groups of interested persons for advisory committees, work groups, and task forces and shall make reasonable attempts to have balanced representation on all advisory committees, work groups, and task forces. This subsection does not require the commission to ensure that all representatives

attend a scheduled meeting. A rule or other action may not be challenged because of the composition of an advisory committee, work group, or task force.

(c) The commission shall monitor the composition and activities of advisory committees, work groups, and task forces appointed by the commission or formed at the staff level and shall maintain that information in a form and location that is easily accessible to the public, including making the information available on the Internet.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.10, eff. Sept. 1, 2001.

Sec. 5.108. EXECUTIVE DIRECTOR. (a) The commission shall appoint an executive director to serve at the will of the commission.

(b) The board shall exercise the powers of appointment which the Texas Water Rights Commission had the authority to exercise on August 30, 1977, except for those powers of appointment expressly provided to the Texas Water Rights Commission in Chapters 50 through 63 inclusive, of the Water Code, which are delegated to the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.109. CHIEF CLERK. (a) The commission shall appoint a chief clerk who shall serve at the will of the commission.

(b) The chief clerk shall assist the commission in carrying out its duties under this code and other law.

(c) The chief clerk shall issue notice of public hearings held under the authority of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.009, eff. Aug. 12, 1991.

Sec. 5.110. GENERAL COUNSEL. (a) The commission shall appoint a general counsel who shall serve at the will of the commission.

(b) The general counsel is the chief legal officer for the

commission.

(c) The general counsel must be an attorney licensed to practice law in this state.

(d) The general counsel shall perform the duties and may exercise the powers specifically authorized by this code or delegated to the general counsel by the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.111. STANDARDS OF CONDUCT. The commission shall provide to its members, appointees, and employees as often as is necessary information regarding their qualifications under this code and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.112. PUBLIC TESTIMONY POLICY. The commission shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 1, eff. June 19, 1987.

Sec. 5.113. COMMISSION AND STAFF RESPONSIBILITY POLICY. The commission shall develop and implement policies that clearly separate the respective responsibilities of the commission and the staff.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.114. APPLICATIONS AND OTHER DOCUMENTS. Applications and other documents to be filed with the commission for final action under this code shall be filed with the executive director and

handled in the manner provided by this code.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.115. PERSONS AFFECTED IN COMMISSION HEARINGS; NOTICE OF APPLICATION. (a) For the purpose of an administrative hearing held by or for the commission involving a contested case, "affected person," or "person affected," or "person who may be affected" means a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. An interest common to members of the general public does not qualify as a personal justiciable interest.

(a-1) The commission shall adopt rules specifying factors which must be considered in determining whether a person is an affected person in any contested case arising under the air, waste, or water programs within the commission's jurisdiction and whether an affected association is entitled to standing in contested case hearings. For a matter referred under Section 5.556, the commission:

(1) may consider:

(A) the merits of the underlying application, including whether the application meets the requirements for permit issuance;

(B) the likely impact of regulated activity on the health, safety, and use of the property of the hearing requestor;

(C) the administrative record, including the permit application and any supporting documentation;

(D) the analysis and opinions of the executive director; and

(E) any other expert reports, affidavits, opinions, or data submitted on or before any applicable deadline to the commission by the executive director, the applicant, or a hearing requestor; and

(2) may not find that:

(A) a group or association is an affected person unless the group or association identifies, by name and physical address in a timely request for a contested case hearing, a member of the group or association who would be an affected person in the person's own right; or

(B) a hearing requestor is an affected person unless the hearing requestor timely submitted comments on the permit

application.

(b) At the time an application for a permit or license under this code is filed with the executive director and is administratively complete, the commission shall give notice of the application to any person who may be affected by the granting of the permit or license. A state agency that receives notice under this subsection may submit comments to the commission in response to the notice but may not contest the issuance of a permit or license by the commission. For the purposes of this subsection, "state agency" does not include a river authority.

(c) At the time an application for any formal action by the commission that will affect lands dedicated to the permanent school fund is filed with the executive director or the commission and is administratively complete, the commission shall give notice of the application to the School Land Board. Notice shall be delivered by certified mail, return receipt requested, addressed to the deputy commissioner of the asset management division of the General Land Office. Delivery is not complete until the return receipt is signed by the deputy commissioner of the asset management division of the General Land Office and returned to the commission.

(d) The commission shall adopt rules for the notice required by this section. The rules must provide for the notice required by this section to be posted on the Internet by the commission.

(e) The notice must state:

(1) the identifying number given the application by the commission;

(2) the type of permit or license sought under the application;

(3) the name and address of the applicant;

(4) the date on which the application was submitted; and

(5) a brief summary of the information included in the permit application.

(f) The notice to the School Land Board under this section shall additionally:

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

(2) describe any foreseeable impact or effect of the commission's action on permanent school fund land.

(g) A formal action or ruling by the commission on an application affecting permanent school fund land that is made without

the notice required by this section is voidable by the School Land Board as to any permanent school fund lands affected by the action or ruling.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.010, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 991, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 882, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1350, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 10.01, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 116 (S.B. 709), Sec. 2, eff. September 1, 2015.

Sec. 5.116. HEARINGS; RECESS. The commission may recess any hearing or examination from time to time and from place to place.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.117. MANDATORY ENFORCEMENT HEARING. (a) The executive director shall monitor compliance with all permits and licenses issued by the commission under this code, and if the evidence available to the executive director through this monitoring process indicates that a permittee or licensee is in substantial noncompliance with his permit or license for a period of four months, or for a shorter period of time if the executive director considers an emergency to exist, the executive director shall report this fact to the commission together with the information relating to the noncompliance.

(b) On receiving a report from the executive director under Subsection (a) of this section, the commission shall call and hold a hearing to determine whether the permittee or licensee who is the subject of the executive director's report has been in substantial noncompliance with his permit or license.

(c) At the conclusion of the hearing, the commission shall issue one of the following orders stating that:

(1) no violation of the permit or license has occurred;

(2) a violation of the permit or license has occurred but has been corrected and no further action is necessary to protect the public interest;

(3) the executive director is authorized to enter into a compliance agreement with the permittee or licensee;

(4) a violation of the permit or license has occurred and an administrative penalty is assessed as provided by this code; or

(5) a violation of the permit or license has occurred, and the executive director is directed to have enforcement proceedings instituted against the permittee or licensee.

(d) A compliance agreement under Subsection (c)(3) of this section is not effective unless it is approved by the commission. If the commission determines at a hearing that a permittee or licensee has not complied with the terms of the compliance agreement, the commission may direct the executive director to institute enforcement proceedings.

(e) The executive director, on receiving an order from the commission directing institution of enforcement proceedings, shall take all necessary steps to have enforcement proceedings instituted.

(f) The commission may compel the attendance of the governing body or any other officer of any permittee or licensee at any hearing held under this section.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.011, eff. Aug. 12, 1991.

Sec. 5.1175. PAYMENT OF PENALTY BY INSTALLMENT. (a) The commission by rule may allow a person who owes a monetary civil or administrative penalty imposed for a violation of law within the commission's jurisdiction or for a violation of a license, permit, or order issued or rule adopted by the commission to pay the penalty in periodic installments. The rule must provide a procedure for a person to apply for permission to pay the penalty over time.

(b) The rule may vary the period over which the penalty may be paid or the amount of the periodic installments according to the amount of the penalty owed and the size of the business that owes the penalty. The period over which the penalty may be paid may not exceed 36 months.

Added by Acts 1995, 74th Leg., ch. 112, Sec. 1, eff. May 17, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 4, eff. September 1, 2009.

Sec. 5.118. POWER TO ADMINISTER OATHS. Each member of the commission, the chief clerk, or a hearings examiner may administer oaths in any hearing or examination on any matter submitted to the commission for action.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.119. COMMISSION TO BE KNOWLEDGEABLE. The commission shall be knowledgeable of the watercourses and natural resources of the state and of the needs of the state concerning the use, storage and conservation of water and the use and conservation of other natural resources and of the need to maintain the quality of the environment in the state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.012, eff. Aug. 12, 1991.

Sec. 5.1191. RESEARCH MODEL. (a) In this section, "research model" means a mechanism for developing a plan to address the commission's practical regulatory needs. The commission's plan shall be prioritized by need and shall identify short-term, medium-term, and long-term research goals. The plan may address preferred methods of conducting the identified research.

(b) The commission shall develop a research model. The commission may appoint a research advisory board to assist the commission in providing appropriate incentives to encourage various interest groups to participate in developing the research model and to make recommendations regarding research topics specific to this state. The research advisory board must include representatives of the academic community, representatives of the regulated community, and public representatives of the state at large.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.11, eff. Sept. 1, 2001.

Sec. 5.1192. COORDINATION OF RESEARCH. (a) The commission shall facilitate and coordinate environmental research in the state according to the research model developed under Section 5.1191.

(b) The commission shall explore private and federal funding opportunities for research needs identified in the research model. The commission may conduct, direct, and facilitate research to implement the commission's research model by administering grants or by contracting for research if money is appropriated to the commission for those purposes.

(c) To the degree practicable, the commission, through the research model, shall coordinate with or make use of any research activities conducted under existing state initiatives, including research by state universities, the Texas Higher Education Coordinating Board, the United States Department of Agriculture, the Texas Department of Agriculture, and other state and federal agencies as appropriate.

(d) This section does not authorize the commission to initiate or direct the research efforts of another entity except under the terms of a grant or contract.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.11, eff. Sept. 1, 2001.

Sec. 5.1193. REPORT. The commission shall include in the reports required by Section 5.178 a description of cooperative research efforts, an accounting of money spent on research, and a review of the purpose, implementation, and results of particular research projects conducted.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.11, eff. Sept. 1, 2001.

Sec. 5.120. CONSERVATION AND QUALITY OF ENVIRONMENT. The commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the

environment and the natural resources of the state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.013, eff. Aug. 12, 1991.

Sec. 5.121. PUBLIC INFORMATION. (a) The commission shall comply with Section 2001.004, Government Code, by indexing and making available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the commission in the discharge of its functions.

(b) The commission shall comply with Section 2001.004, Government Code, by indexing and making available for public inspection all of the commission's final orders, decisions, and opinions.

Added by Acts 1987, 70th Leg., ch. 638, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(71), (72), eff. Sept. 1, 1995.

Sec. 5.122. DELEGATION OF UNCONTESTED MATTERS TO EXECUTIVE DIRECTOR. (a) The commission by rule or order may delegate to the executive director the commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration, or other authorization or approval if:

(1) required notice of the application or request for the authorization or approval has been given;

(2) the holder of or applicant for the authorization or approval agrees in writing to the action to be taken by the executive director; and

(3) the application or request:

(A) is uncontested and does not require an evidentiary hearing;

(B) has become uncontested before parties are named because each person who requested a contested case hearing within the time allowed by law has:

(i) withdrawn the request for a contested case

hearing without condition;

(ii) withdrawn the request for a contested case hearing conditioned only on the withdrawal of all other hearing requests; or

(iii) agreed in writing to allow the executive director to make a final decision on the matter; or

(C) has become uncontested because all parties have agreed in writing to the action to be taken by the executive director.

(b) A person affected by an action the executive director takes on a matter delegated under this section may appeal the executive director's action to the commission unless the action is a decision:

(1) regarding a federal operating permit under Subchapter C, Chapter 382, Health and Safety Code; or

(2) specified as final and appealable by the commission rule that delegates the decision to the executive director.

(c) A person affected by a decision of the executive director on a matter delegated under this section that regards a federal operating permit under Subchapter C, Chapter 382, Health and Safety Code, may:

(1) petition the administrator of the United States Environmental Protection Agency in accordance with rules adopted under Section 382.0563, Health and Safety Code; or

(2) file a petition for judicial review under Section 382.032, Health and Safety Code.

(d) The commission's authority under this section is cumulative of the commission's authority to delegate its powers, duties, or rights under any other law.

Added by Acts 1995, 74th Leg., ch. 860, Sec. 1, eff. Aug. 28, 1995.
Amended by Acts 1997, 75th Leg., ch. 302, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1065 (H.B. 3177), Sec. 1, eff. September 1, 2017.

Sec. 5.124. AUTHORITY TO AWARD GRANTS. (a) With the consent of the commission, the executive director may award grants for any purpose regarding resource conservation or environmental protection in accordance with this section.

(b) The commission by rule shall establish procedures for awarding a grant, for making any determination related to awarding a grant, and for making grant payments.

(c) Each activity funded by a grant must directly relate to a purpose specified in the grant. A grant may be awarded only for a purpose consistent with the commission's jurisdiction and purposes under law, including:

(1) the development or implementation of a comprehensive conservation and management plan under Section 320, Federal Water Pollution Control Act (33 U.S.C. Section 1330), for a designated national estuary in this state;

(2) a demonstration project that involves new techniques for pollution prevention, energy or resource conservation, or waste management;

(3) an environmental purpose identified in a federal grant that is intended as a pass-through grant;

(4) development or improvement of monitoring or modeling techniques for water or air quality;

(5) support of a local air pollution program; or

(6) a study or program related to efforts to prevent an area that is near nonattainment with federal air quality standards from reaching nonattainment status.

(d) A grant may be awarded to any person that meets the eligibility requirements of the grant. The executive director shall establish eligibility requirements for each grant appropriate to the purposes of and activities under the grant and the method of selecting the recipient.

(e) Selection of grant recipients must be by solicitation of a proposal or application except as provided by Subsections (f) and (g). The executive director may specify any selection criterion the executive director considers relevant to the grant. Selection criteria must address:

(1) evaluation and scoring of:

(A) fiscal controls;

(B) project effectiveness;

(C) project cost; and

(D) previous experience with grants and contracts; and

(2) the possibility and method of making multiple awards.

(f) A grant may be made by direct award only if:

(1) the executive director determines that:

(A) selection of recipients by the solicitation of proposals or applications is not feasible; and

(B) awarding the grant directly is in the best interest of the state;

(2) eligibility for the grant is limited to:

(A) an agency or political subdivision of this state or of another state;

(B) a state institution of higher learning of this state or of another state, including any part or service of the institution; or

(C) an agency of the United States; or

(3) the grant is awarded to a person established or authorized to develop or implement a comprehensive conservation and management plan under Section 320, Federal Water Pollution Control Act (33 U.S.C. Section 1330), for a national estuary in this state.

(g) If a solicitation of a proposal is made for the purpose of identifying a partner for a joint application for a federal grant that is subsequently awarded to the commission, the executive director is not required to make an additional solicitation for entering into a pass-through grant with an identified partner.

(h) The executive director shall publish information regarding a solicitation related to a grant to be awarded under this section on the commission's electronic business daily in the manner provided by Section 2155.074, Government Code, as added by Section 1, Chapter 508, Acts of the 75th Legislature, Regular Session, 1997.

(i) For a grant awarded under this section, the commission may use:

(1) money appropriated for grant-making purposes;

(2) federal money granted for making pass-through grants; and

(3) state or federal grant money appropriated for a purpose that the executive director determines is consistent with a purpose of the grant from the commission.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 28, eff. Sept. 1, 1999.

Sec. 5.125. COST-SHARING FOR ENVIRONMENTAL COMPLIANCE ASSESSMENTS BY CERTAIN BUSINESSES. (a) In this section, "environmental compliance assessment" means an environmental

compliance audit, pollution prevention assessment, or environmental management system audit performed by a small business. The term does not include an audit conducted under Chapter 1101, Health and Safety Code.

(b) The commission may implement cost-sharing to assist with payment of costs for an environmental compliance assessment performed by a business subject to regulation by the commission that employs at least 100 but not more than 250 individuals.

Added by Acts 1999, 76th Leg., ch. 104, Sec. 2, eff. May 17, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(d), eff. September 1, 2017.

Sec. 5.126. REPORT ON ENFORCEMENT ACTIONS. (a) Not later than December 1 of each year, the commission shall:

(1) prepare an electronic report on its enforcement actions for the preceding fiscal year, including a comparison with its enforcement actions for each of the preceding five fiscal years; and

(2) provide the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The report shall separately describe the enforcement actions for each type of regulatory program, including programs under Chapters 26 and 27 of this code and Chapters 361, 382, and 401, Health and Safety Code.

(c) The description of enforcement actions for each type of regulatory program shall include:

(1) the number of inspections;

(2) the number of notices of violations;

(3) the number of enforcement actions;

(4) the type of enforcement actions;

(5) the amount of penalties assessed, deferred, or collected; and

(6) any other information the commission determines relevant.

(d) As soon as possible after the end of each fiscal year, the attorney general shall provide the commission information on enforcement actions referred by the commission to the attorney general that were resolved during the preceding fiscal year or are

pending at the end of that fiscal year.

Added by Acts 1997, 75th Leg., ch. 304, Sec. 1, eff. May 26, 1997; Acts 1997, 75th Leg., ch. 1082, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 5.123 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(112), eff. Sept. 1, 2001.

Sec. 5.127. ENVIRONMENTAL MANAGEMENT SYSTEMS. (a) In this section, "environmental management system" means a documented management system to address applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.

(b) The commission by rule shall adopt a comprehensive program that provides regulatory incentives to encourage the use of environmental management systems by regulated entities, state agencies, local governments, and other entities as determined by the commission. The incentives may include:

(1) on-site technical assistance;

(2) accelerated access to information about programs; and

(3) to the extent consistent with federal requirements:

(A) inclusion of information regarding an entity's use of an environmental management system in the entity's compliance history and compliance summaries; and

(B) consideration of the entity's implementation of an environmental management system in scheduling and conducting compliance inspections.

(c) The rules must provide that an environmental management system, at a minimum, must require the entity implementing the system to:

(1) adopt a written environmental policy;

(2) identify the environmental aspects and impacts of the entity's activities;

(3) set priorities, goals, and targets for continuous improvement in environmental performance and for ensuring compliance with environmental laws, regulations, and permit terms applicable to the facility;

(4) assign clear responsibilities for implementation, training, monitoring, and corrective action and for ensuring compliance with environmental laws, regulations, and permit terms applicable to the facility;

(5) document implementation of procedures and results; and

(6) evaluate and refine implementation over time to improve attainment of environmental goals and targets and the system itself.

(d) The commission shall:

(1) integrate the use of environmental management systems into its regulatory programs, including permitting, compliance assistance, and enforcement;

(2) develop model environmental management systems for small businesses and local governments; and

(3) establish environmental performance indicators to measure the program's performance.

Added by Acts 2001, 77th Leg., ch. 1161, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.128. ELECTRONIC REPORTING TO COMMISSION; ELECTRONIC TRANSMISSION OF INFORMATION BY COMMISSION; REDUCTION OF DUPLICATE REPORTING. (a) The commission shall encourage the use of electronic reporting through the Internet, to the extent practicable, for reports required by the commission. Notwithstanding any other law, the commission may adjust fees as necessary to encourage electronic reporting and the use of the commission's electronic document receiving system. An electronic report must be submitted in a format prescribed by the commission. The commission may consult with the Department of Information Resources on developing a simple format for use in implementing this subsection.

(a-1) Notwithstanding any other law, the commission may utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission.

(a-2) The commission shall utilize electronic means of transmission for any notice issued or sent by the commission to a state senator or representative, unless the senator or representative has requested to receive notice by mail.

(a-3) If the notice issued or sent under Subsection (a-2) concerns a permit for a facility, the notice must include an Internet link to an electronic map indicating the location of the facility.

(b) The commission shall strive to reduce duplication in reporting requirements throughout the agency.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.12, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 664 (H.B. 1254), Sec. 1, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 962 (H.B. 3544), Sec. 1, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 108 (H.B. 610), Sec. 1, eff. September 1, 2011.

Sec. 5.129. SUMMARY FOR PUBLIC NOTICES. (a) The commission by rule shall provide for each public notice issued or published by the commission or by a person under the jurisdiction of the commission as required by law or by commission rule to include at the beginning of the notice a succinct statement of the subject of the notice. The rules must provide that a summary statement must be designed to inform the reader of the subject matter of the notice without having to read the entire text of the notice.
(b) The summary statement may not be grounds for challenging the validity of the proposed action for which the notice was published.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.12, eff. Sept. 1, 2001.

Sec. 5.130. CONSIDERATION OF CUMULATIVE RISKS. The commission shall:
(1) develop and implement policies, by specific environmental media, to protect the public from cumulative risks in areas of concentrated operations; and
(2) give priority to monitoring and enforcement in areas in which regulated facilities are concentrated.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.12, eff. Sept. 1, 2001.

Sec. 5.132. CREATION OF PERFORMANCE MEASURES FOR INNOVATIVE REGULATORY PROGRAMS. The commission shall work with the Legislative Budget Board to create performance measures that assess the improvements in environmental quality achieved by innovative regulatory programs implemented by the commission.

Added by Acts 2001, 77th Leg., ch. 1483, Sec. 1, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 5.127 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(138), eff. Sept. 1, 2003.

Sec. 5.133. ACTIONS IN MEXICO. The commission may take and finance any action in Mexico, in cooperation with governmental authorities of Mexico, that in the opinion of the commission:

(1) is necessary or convenient to accomplish a duty of the commission imposed by law; and

(2) will yield benefits to the environment in this state.

Added by Acts 2001, 77th Leg., ch. 728, Sec. 1, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 5.127 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(139), eff. Sept. 1, 2003.

Sec. 5.134. USE OF ENVIRONMENTAL TESTING LABORATORY DATA AND ANALYSIS. (a) The commission may accept environmental testing laboratory data and analysis for use in commission decisions regarding any matter under the commission's jurisdiction relating to permits or other authorizations, compliance matters, enforcement actions, or corrective actions only if the data and analysis is prepared by an environmental testing laboratory accredited by the commission under Subchapter R or an environmental testing laboratory described in Subsection (b) or (e).

(b) The commission may accept for use in commission decisions data and analysis prepared by:

(1) an on-site or in-house environmental testing laboratory if the laboratory:

(A) is periodically inspected by the commission; or

(B) is located in another state and is accredited or periodically inspected by that state;

(2) an environmental testing laboratory that is accredited under federal law; or

(3) if the data and analysis are necessary for emergency response activities and the required data and analysis are not otherwise available, an environmental testing laboratory that is not accredited by the commission under Subchapter R or under federal law.

(c) The commission by rule may require that data and analysis used in other commission decisions be obtained from an environmental testing laboratory accredited by the commission under Subchapter R.

(d) The commission shall periodically inspect on-site or in-house environmental testing laboratories described in Subsection (b).

(e) The commission may accept for use in commission decisions data from an on-site or in-house laboratory if the laboratory is performing the work:

(1) for another company with a unit located on the same site; or

(2) without compensation for a governmental agency or a charitable organization if the laboratory is periodically inspected by the commission.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.12, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 5.127 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(140), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 912, Sec. 1, eff. Sept. 1, 2005.

Sec. 5.135. SMALL BUSINESS COMPLIANCE ASSISTANCE PROGRAM. (a) The commission shall establish a small business compliance assistance program.

(b) The program shall include:

(1) mechanisms to develop, collect, and coordinate information about compliance methods and technologies for small businesses and to encourage cooperation between those small businesses and other persons to achieve compliance with applicable air quality, water quality, and solid waste laws;

(2) mechanisms to assist small businesses with pollution prevention and the prevention and detection of accidental releases, including information about alternative technologies, process changes, products, and methods of operation to reduce air pollution, water pollution, and improper disposal of solid waste;

(3) an ombudsman to help small businesses meet the requirements of the federal Clean Air Act Amendments of 1990 (Pub.L.

No. 101-549), as amended, the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), as amended, and the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.), as amended;

(4) a compliance assistance program to help small businesses identify the requirements for and obtain required permits in a timely and efficient manner;

(5) notification procedures to assure that small businesses receive notice of their rights and obligations under the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), as amended, the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), as amended, and the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.), as amended, in time to identify applicable requirements and evaluate and implement appropriate compliance methods;

(6) auditing services or referrals for small business stationary source operations to determine compliance with the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), as amended; and

(7) procedures for considering a request by a small business to modify work practices, technological compliance methods, or an implementation schedule requirement that precedes a compliance date, taking into account the technological and financial capability of that source.

(c) The program shall include a small business compliance assistance advisory panel that consists of the following seven members:

(1) two members who are not owners or representatives of owners of small business stationary sources, selected by the governor to represent the public;

(2) two members who are owners or who represent owners of small business stationary sources, selected by the speaker of the house of representatives;

(3) two members who are owners or who represent owners of small business stationary sources, selected by the lieutenant governor; and

(4) one member selected by the chairman of the commission to represent the commission.

(d) The small business compliance assistance advisory panel shall:

(1) give advisory opinions on the effectiveness of the

program, the difficulties of implementing the program, and the incidence and severity of enforcement;

(2) report periodically to the administrator regarding the program's compliance with requirements of the Paperwork Reduction Act of 1980 (Pub.L. No. 96-511), as amended, the Regulatory Flexibility Act (5 U.S.C. Section 601 et seq.), as amended, and the Equal Access to Justice Act (Pub.L. No. 96-481), as amended;

(3) review information the program provides to small businesses to assure the information is understandable to nonexperts; and

(4) distribute opinions, reports, and information developed by the panel.

(e) The commission shall enter into a memorandum of understanding with the Texas Department of Economic Development to coordinate assistance to any small business in applying for permits from the commission.

(f) The commission may adopt rules reasonably necessary to implement this section. Rules relating to air pollution must comply with Section 507 of the federal Clean Air Act (42 U.S.C. Section 7661f), as added by Section 501 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), as amended, and regulations adopted under that Act.

(g) In this section:

(1) "Program" means the small business compliance assistance program.

(2) "Small business" means:

(A) a small business stationary source; or

(B) a business that employs at least 100 but not more than 250 individuals.

(3) "Small business stationary source" has the meaning assigned by Section 507(c) of the federal Clean Air Act (42 U.S.C. Section 7661f), as added by Section 501 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), as amended.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.05, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.156, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 104, Sec. 3, eff. May 17, 1999. Renumbered from Health & Safety Code, Sec. 382.0365 and amended by Acts 2003, 78th Leg., ch. 81, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER E. ADMINISTRATIVE PROVISIONS FOR COMMISSION

Sec. 5.171. AUDIT. The financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 584, Sec. 73, eff. Sept. 1, 1989.

Sec. 5.172. FUNDS FROM OTHER STATE AGENCIES. Any state agency that has statutory responsibilities for environmental pollution or environmental quality control and that receives a legislative appropriation for these purposes may transfer to the commission any amount mutually agreed on by the commission and the agency, subject to the approval of the governor.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.014, eff. Aug. 12, 1991.

Sec. 5.173. PUBLIC INFORMATION RELATING TO COMMISSION. The commission shall prepare information of public interest describing the functions of the commission and describing the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and the appropriate state agencies.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.1733. ELECTRONIC POSTING OF INFORMATION. The commission shall post public information on its website. Such information shall include but not be limited to the minutes of advisory committee meetings, pending permit and enforcement actions, compliance histories, and emissions inventories by county and facility name.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.13, eff. Sept. 1, 2001.

Sec. 5.174. COPIES OF DOCUMENTS, PROCEEDINGS, ETC. (a) Except as otherwise specifically provided by this code and subject to the specific limitations provided by this code, on application of any person the commission shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the commission. A certified copy with the seal of the commission and the signature of the presiding officer of the commission or the executive director or chief clerk is admissible as evidence in any court or administrative proceeding.

(b) The commission shall provide in its rules the fees that will be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the commission, except that the fees set by the commission for copies prepared by the commission may not exceed those prescribed in Chapter 603, Government Code.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(13), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.01, eff. Sept. 1, 2001.

Sec. 5.175. INSPECTION OF WATER POLLUTION RECORDS. (a) All information, documents, and data collected by the commission in the performance of its duties are the property of the state.

(b) Except as provided by Subsection (c) of this section, records, reports, data, or other information obtained relative to or from sources or potential sources of discharges of water pollutants shall be available to the public during regular office hours.

(c) If a showing satisfactory to the executive director is made by any person that those records, reports, data, or other information, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the commission shall consider those records, reports, data, or other information as confidential.

(d) This chapter may not be construed to make confidential any effluent data, including effluent data in records, reports, or other information, and including effluent data in permits, draft permits, and permit applications.

(e) Records, data, or other information considered confidential may be disclosed or transmitted to officers, employees, or authorized representatives of the state or of the United States with responsibilities in water pollution control. However, this disclosure or transmittal may be made only after adequate written assurance is given to the executive director that the confidentiality of the disclosed or transmitted records, data, or other information will be afforded all reasonable protection allowed by law by the receiving officer, employee or authorized representative on behalf of, and under the authority of, the receiving agency or political entity.

(f) The executive director may not disclose or transmit records, data, or other information considered confidential if he has reason to believe the recipient will not protect their confidentiality to the most reasonable extent provided by law.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, 1.168; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.016, eff. Aug. 12, 1991.

Sec. 5.176. COMPLAINT FILE. (a) The commission shall maintain a file on each written complaint filed with the commission about a matter within the commission's regulatory jurisdiction. The file must include:

(1) the name of the person who filed the complaint, unless the person has specifically requested anonymity;

(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 agency closed the file without taking action other than to investigate the complaint.

(b) The commission shall establish and implement procedures for receiving complaints submitted by means of the Internet and orally and shall maintain files on those complaints as provided by Subsection (a).

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1,

1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.15, eff. Sept. 1, 2001.

Sec. 5.1765. PUBLICATION OF INFORMATION REGARDING COMPLAINT PROCEDURES AND POLICIES. The commission shall establish a process for educating the public regarding the commission's complaint policies and procedures. As part of the public education process, the commission shall make available to the public in pamphlet form an explanation of the complaint policies and procedures, including information regarding and standards applicable to the collection and preservation of credible evidence of environmental problems by members of the public.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.14, eff. Sept. 1, 2001.

Sec. 5.177. NOTICE OF COMPLAINT PROCEDURES; NOTICE OF INVESTIGATION STATUS. (a) The agency shall provide to the person filing the complaint about a matter within the commission's regulatory jurisdiction and to each person who is the subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(b) 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.

(c) The commission is not required to provide the information described in Subsection (a) or (b) to a complainant who files an anonymous complaint or provides inaccurate contact information.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.15, eff. Sept. 1, 2001.

Sec. 5.1771. COORDINATION OF COMPLAINT INVESTIGATIONS WITH LOCAL ENFORCEMENT OFFICIALS: TRAINING. (a) The commission shall share information regarding a complaint about a matter within the commission's regulatory jurisdiction made to the commission with local officials with authority to act on the complaint in the county

or municipality in which the alleged action or omission that is the subject of the complaint occurred or is threatening to occur.

(b) On request, the commission shall provide training for local enforcement officials in investigating complaints and enforcing environmental laws relating to matters under the commission's jurisdiction under this code or the Health and Safety Code. The training must include, at a minimum:

(1) procedures for local enforcement officials to use in addressing citizen complaints if the commission is unavailable or unable to respond to the complaint; and

(2) an explanation of local government authority to enforce state laws and commission rules relating to the environment.

(c) The commission may charge a reasonable fee for providing training to local enforcement officials as required by Subsection (b) in an amount sufficient to recover the costs of the training.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.16, eff. Sept. 1, 2001.

Sec. 5.1772. AFTER-HOURS RESPONSE TO COMPLAINTS. (a) The commission shall adopt and implement a policy to provide timely response to complaints during periods outside regular business hours.

(b) This section does not:

(1) require availability of field inspectors for response 24 hours a day, seven days a week, in all parts of the state; or

(2) authorize additional use of overtime.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.16, eff. Sept. 1, 2001.

Sec. 5.1773. COMPLAINT ASSESSMENT. (a) The commission annually shall conduct a comprehensive analysis of the complaints it receives, including analysis by the following categories:

(1) air;

(2) water;

(3) waste;

(4) priority classification;

(5) region;

(6) commission response;

(7) enforcement action taken; and

(8) trends by complaint type.

(b) In addition to the analysis required by Subsection (a), the commission shall assess the impact of changes made in the commission's complaint policy.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.16, eff. Sept. 1, 2001.

Sec. 5.178. BIENNIAL REPORTS. (a) On or before December 1 of each even-numbered year, the commission shall file with the governor and the members of the legislature a written report that includes a statement of the activities of the commission during the preceding fiscal biennium.

(b) The report due by December 1 of an even-numbered year shall include, in addition:

(1) the commission's recommendations for necessary and desirable legislation; and

(2) the following reports:

(A) the assessments and reports required by Section 361.0219(c), Health and Safety Code;

(B) the reports required by Section 26.0135(d) and Section 5.02, Chapter 133, Acts of the 69th Legislature, Regular Session, 1985; and

(C) a summary of the analyses and assessments required by Section 5.1773.

(c) Repealed by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.04(b).

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(164), eff. June 17, 2011.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1082, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 1.17, eff. Sept. 1, 2001; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.02, 7.03, 7.04(b), eff. Jan. 11, 2004.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(164), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 21.001,

eff. September 1, 2013.

Sec. 5.1781. APPLICATION REQUIREMENT FOR COLONIAS PROJECTS. (a) In this section, "colonia" means a geographic area that:

(1) is an economically distressed area as defined by Section 17.921;

(2) is located in a county any part of which is within 62 miles of an international border; and

(3) consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(6), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(6), eff. September 1, 2019.

(d) Regarding any projects funded by the commission that provide assistance to colonias, the commission shall require an applicant for the funds to submit to the commission a colonia classification number, if one exists, for each colonia that may be served by the project proposed in the application. If a colonia does not have a classification number, the commission may contact the secretary of state or the secretary of state's representative to obtain the classification number. On request of the commission, the secretary of state or the secretary of state's representative shall assign a classification number to the colonia.

Added by Acts 2007, 80th Leg., R.S., Ch. 341 (S.B. 99), Sec. 12, eff. June 15, 2007.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 2.13, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 2.14, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(6), eff. September 1, 2019.

Sec. 5.179. SEAL. The commission shall have a seal bearing the words Texas Natural Resource Conservation Commission encircling the

oak and olive branches common to other official seals.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.017, eff. Aug. 12, 1991.

SUBCHAPTER F. EXECUTIVE DIRECTOR

Sec. 5.221. GENERAL RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR. The executive director shall manage the administrative affairs of the commission subject to this code and other laws and under the general supervision and direction of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.222. DELEGATION OF EXECUTIVE DIRECTOR'S AUTHORITY OR DUTY. The executive director may delegate to the executive director's staff any authority or duty assigned to the executive director unless the statute, rule, or order assigning or delegating the authority or duty specifies otherwise.

Added by Acts 1997, 75th Leg., ch. 302, Sec. 2, eff. Sept. 1, 1997. Renumbered from Sec. 5.238 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(109), eff. Sept. 1, 1999.

Sec. 5.223. ADMINISTRATIVE ORGANIZATION OF COMMISSION. Subject to approval of the commission, the executive director may organize and reorganize the administrative sections and divisions of the commission in a manner and in a form that will achieve the greatest efficiency and effectiveness.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.224. INFORMATION REQUEST TO BOARD. (a) With regard to any matter pending before the commission, the executive director may obtain from the board information relating to that matter.

(b) On receiving a request from the executive director, the board should make the requested information available within 30 days after the information is requested and shall make the requested information available not later than 90 days after the information is requested.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.225. CAREER LADDER PROGRAM. The executive director 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.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.226. MERIT PAY. The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this section.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.227. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or his designee 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) a comprehensive 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 state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.18, eff. Sept. 1, 2001.

Sec. 5.228. APPEARANCES AT HEARINGS. (a) The position of and information developed by the commission shall be presented by the executive director or his designated representative at hearings of the commission and the hearings held by federal, state, and local agencies on matters affecting the public's interest in the state's environment and natural resources, including matters that have been determined to be policies of the state.

(b) The executive director shall be named a party in hearings before the commission in a matter in which the executive director bears the burden of proof.

(c) The executive director shall participate as a party in contested case permit hearings before the commission or the State Office of Administrative Hearings to:

(1) provide information to complete the administrative record; and

(2) support the executive director's position developed in the underlying proceeding, unless the executive director has revised or reversed that position.

(d) In a contested case hearing relating to a permit application, the executive director or the executive director's designated representative may not rehabilitate the testimony of a witness unless the witness is a commission employee.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1021, Sec. 10.04, eff. September 1, 2011.

(f) The fact that the executive director is not named as a party in a hearing before the commission is not grounds for appealing a commission decision.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.018, eff. Aug. 12, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 1.20, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 10.02, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 10.04, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 116 (S.B. 709), Sec. 3, eff. September 1, 2015.

Sec. 5.229. CONTRACTS. (a) The executive director, on behalf of the commission, may negotiate with and with the consent of the commission enter into contracts with the United States or any of its agencies for the purpose of carrying out the powers, duties, and responsibilities of the commission.
(b) The executive director, on behalf of the commission, may negotiate with and with the consent of the commission enter into contracts or other agreements with states and political subdivisions of this state or any other entity for the purpose of carrying out the powers, duties, and responsibilities of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.2291. SCIENTIFIC AND TECHNICAL SERVICES. (a) In this section, "scientific and technical environmental services" means services, other than engineering services, of a scientific or technical nature the conduct of which requires technical training and professional judgment. The term includes modeling, risk assessment, site characterization and assessment, studies of the magnitude, source, and extent of contamination, contaminant fate and transport analysis, watershed assessment and analysis, total maximum daily load studies, scientific data analysis, and similar tasks, to the extent those tasks are not defined as the "practice of engineering" under Chapter 1001, Occupations Code.
(b) Except as provided by Section 5.2292, the procurement of a

contract for scientific and technical environmental services shall be conducted under the procedures for professional services selection provided in Subchapter A, Chapter 2254, Government Code.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.21, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.842, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.05, eff. September 1, 2011.

Sec. 5.2292. CONTRACTS FOR SERVICES UNDER PETROLEUM STORAGE TANK STATE-LEAD PROGRAM. (a) The executive director may directly award a contract for scientific and technical environmental services to a person if:

(1) the contract is for the performance of services related to the remediation of a site that has been placed in the state-lead program under Section 26.3573(r-1);

(2) the person has registered to perform corrective action under Section 26.364;

(3) the person is eligible to receive a contract award from the state;

(4) the person was performing related work at the site on or before July 1, 2011; and

(5) the contract includes all contract provisions required for state contracts.

(b) Notwithstanding Section 2254.004, Government Code, the executive director may directly award a contract for engineering services to a person if:

(1) the contract is for the performance of services related to the remediation of a site that has been placed in the state-lead program under Section 26.3573(r-1);

(2) the person is licensed under Chapter 1001, Occupations Code;

(3) the person has registered to perform corrective action under Section 26.364;

(4) the person is eligible to receive a contract award from the state;

(5) the person was performing related work at the site on

or before July 1, 2011; and

(6) the contract includes all contract provisions required for state contracts.

(c) Nothing in Subsection (a) or (b) requires the executive director to make an award at a site or prevents the executive director from negotiating additional contract terms, including qualifications.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.06, eff. September 1, 2011.

Sec. 5.230. ENFORCEMENT. On approval of the commission, the executive director may enforce the terms and conditions of any permit, certified filing, certificate of adjudication, order, standard, or rule by injunction or other appropriate remedy in a court of competent jurisdiction.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.231. TRAVEL EXPENSES. The executive director is entitled to receive actual and necessary travel expenses. Other employees of the commission are entitled to receive travel expenses as provided in the General Appropriations Act.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.232. EMPLOYEE MOVING EXPENSES. If provided by legislative appropriation, the commission may pay the costs of transporting and delivering the household goods and effects of employees transferred by the executive director from one permanent station to another when, in the judgment of the executive director, the transfer will serve the best interest of the state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.233. GIFTS AND GRANTS. The executive director may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out the powers and duties under this code and other law.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.019, eff. Aug. 12, 1991.

Sec. 5.234. APPLICATIONS AND OTHER DOCUMENTS. (a) An application, petition, or other document requiring action of the commission shall be presented to the executive director and handled as provided by this code or other law and in the rules adopted by the commission.

(b) After an application, petition, or other document is processed, it shall be presented to the commission for action as required by law and rules of the commission. If, in the course of reviewing an application and preparing a draft permit, the executive director has required changes to be made to the applicant's proposal, the executive director shall prepare a summary of the changes that were made to increase protection of public health and the environment.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.020, eff. Aug. 12, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 1.22, eff. Sept. 1, 2001.

Sec. 5.236. GROUNDWATER CONTAMINATION REPORTS. (a) If the executive director acquires information that confirms that a potential public health hazard exists because usable groundwater has been or is being contaminated, the executive director, not later than the 30th day after the date on which the executive director acquires the information confirming contamination, shall give written notice of the contamination to the following persons:

(1) the county judge and the county health officer, if any, in each county in which the contamination has occurred or is occurring;

(2) any person under the commission's jurisdiction who is

suspected of contributing to the contamination;

(3) any other state agency with jurisdiction over any person who is suspected of contributing to the contamination; and

(4) a groundwater conservation district, if the contamination has occurred or is occurring in the jurisdiction of the district.

(b) The executive director shall give the notice in the manner and form, and include the information, required by rule of the commission.

Added by Acts 1987, 70th Leg., ch. 393, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 607 (S.B. 430), Sec. 1, eff. September 1, 2011.

Sec. 5.237. OPERATING FUND. (a) The Texas Natural Resource Conservation Commission Operating Fund is established in the treasury. At the request of the commission, the comptroller is authorized to transfer to an account in the operating fund any appropriations made to the commission for the purpose of making expenditures. After expenditures have been made from the operating fund and proper line-item appropriations identified, the commission shall submit periodic adjustments to the comptroller in summary amounts to record accurate cost allocations to the appropriate funds and accounts. Periodic adjustments under this section shall be made at least quarterly.

(b) The commission will establish and maintain accounting records adequate to support the periodic reconciliation of operating fund transfers and document expenditures from each fund or account. All expenditures shall be made consistent with provisions of law relating to the authorized use of each fund or account from which appropriations are made to the commission.

Added by Acts 1993, 73rd Leg., ch. 746, Sec. 2, eff. Aug. 30, 1993.

Sec. 5.238. ADMINISTRATIVE ACCOUNT. The commission administrative account is an account in the general revenue fund. The account consists of reimbursements to the commission for services provided by the commission and other sources specified by law and

authorized by legislative appropriation.

Added by Acts 1997, 75th Leg., ch. 333, Sec. 2, eff. Sept. 1, 1997.

Sec. 5.239. PUBLIC EDUCATION AND ASSISTANCE. (a) The executive director shall ensure that the agency is responsive to environmental and citizens' concerns, including environmental quality and consumer protection.

(b) The executive director shall develop and implement a program to:

(1) provide a centralized point for the public to access information about the commission and to learn about matters regulated by the commission;

(2) identify and assess the concerns of the public in regard to matters regulated by the commission; and

(3) respond to the concerns identified by the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 3.01, eff. September 1, 2011.

SUBCHAPTER G. OFFICE OF PUBLIC INTEREST COUNSEL

Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF THE OFFICE OF PUBLIC INTEREST COUNSEL. The office of public interest counsel is created to ensure that the commission promotes the public's interest. The primary duty of the office is to represent the public interest as a party to matters before the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 3.02, eff. September 1, 2011.

Sec. 5.272. PUBLIC INTEREST COUNSEL. The office shall be headed by a public interest counsel appointed by the commission. The executive director may submit the names and qualifications of candidates for public interest counsel to the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989.

Sec. 5.2725. ANNUAL REPORT; PERFORMANCE MEASURES. (a) The office of public interest counsel shall report to the commission each year in a public meeting held on a date determined by the commission to be timely for the commission to include the reported information in the commission's reports under Sections 5.178(a) and (b) and in the commission's biennial legislative appropriations requests as appropriate:

(1) an evaluation of the office's performance in representing the public interest in the preceding year;

(2) an assessment of the budget needs of the office, including the need to contract for outside expertise; and

(3) any legislative or regulatory changes recommended under Section 5.273.

(b) The commission and the office of public interest counsel shall work cooperatively to identify performance measures for the office.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 3.03, eff. September 1, 2011.

Sec. 5.273. DUTIES OF THE PUBLIC INTEREST COUNSEL. (a) The counsel shall represent the public interest and be a party to all proceedings before the commission.

(b) The counsel may recommend needed legislative and regulatory changes.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 965, Sec. 1.23, eff. Sept. 1, 2001.

Sec. 5.274. STAFF; OUTSIDE TECHNICAL SUPPORT. (a) The office shall be adequately staffed to carry out its functions under this code.

(b) The counsel may obtain and use outside technical support to carry out its functions under this code.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 965, Sec. 1.23, eff. Sept. 1, 2001.

Sec. 5.275. APPEAL. A ruling, decision, or other act of the commission may not be appealed by the counsel.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989.

Sec. 5.276. FACTORS FOR PUBLIC INTEREST REPRESENTATION. (a) The commission by rule, after consideration of recommendations from the office of public interest counsel, shall establish factors the public interest counsel must consider before the public interest counsel decides to represent the public interest as a party to a commission proceeding.

(b) Rules adopted under this section must include:

(1) factors to determine the nature and extent of the public interest; and

(2) factors to consider in prioritizing the workload of the office of public interest counsel.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 3.04, eff. September 1, 2011.

SUBCHAPTER H. DELEGATION OF HEARINGS

Sec. 5.311. DELEGATION OF RESPONSIBILITY. (a) The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility to hear any matter before the commission.

(b) Except as provided in Subsection (a), the administrative law judge shall report to the commission on the hearing in the manner provided by law.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985. Renumbered from Water Code Sec. 5.313 and amended by Acts 1995, 74th Leg., ch. 106, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.01, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.02, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 2, eff. September 1, 2013.

Sec. 5.312. TIME LIMIT FOR ISSUANCE OR DENIAL OF PERMITS. (a) Except as provided in Subsection (b), all permit decisions shall be made within 180 days of the receipt of the permit application or application amendment or the determination of administrative completeness, whichever is later.

(b) This section does not apply to permits issued under federally delegated or approved programs unless allowed under that program.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.022, eff. Aug. 12, 1991. Renumbered from Water Code Sec. 5.314 by Acts 1995, 74th Leg., ch. 106, Sec. 2, eff. Sept. 1, 1995.

Sec. 5.313. HEARING EXAMINERS REFERENCED IN LAW. Any reference in law to a hearing examiner who has a duty related to a case pending before the commission means an administrative law judge of the State Office of Administrative Hearings.

Amended by Acts 1995, 74th Leg., ch. 106, Sec. 2, eff. Sept. 1, 1995.

Sec. 5.315. DISCOVERY IN CASES USING PREFILED WRITTEN TESTIMONY. In a contested case hearing delegated by the commission to the State Office of Administrative Hearings that uses prefiled written testimony, all discovery must be completed before the deadline for the submission of that testimony.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 10.03, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 1, eff. September 1, 2015.

SUBCHAPTER I. JUDICIAL REVIEW

Sec. 5.351. JUDICIAL REVIEW OF COMMISSION ACTS. (a) A person affected by a ruling, order, decision, or other act of the commission may file a petition to review, set aside, modify, or suspend the act of the commission.

(b) A person affected by a ruling, order, or decision of the commission must file his petition within 30 days after the effective date of the ruling, order, or decision. A person affected by an act other than a ruling, order, or decision must file his petition within 30 days after the date the commission performed the act.

(c) Notwithstanding Subsection (b), a person affected by a ruling, order, or decision on a matter delegated to the executive director under Section 5.122 or other law may, after exhausting any administrative remedies, file a petition to review, set aside, modify, or suspend the ruling, order, or decision not later than the 30th day after:

(1) the effective date of the ruling, order, or decision; or

(2) if the executive director's ruling, order, or decision is appealed to the commission as authorized by Section 5.122(b) or other law, the earlier of:

(A) the date the commission denies the appeal; or

(B) the date the appeal is overruled by operation of law in accordance with commission rules.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1065 (H.B. 3177), Sec. 2, eff. September 1, 2017.

Sec. 5.352. REMEDY FOR COMMISSION OR EXECUTIVE DIRECTOR INACTION. A person affected by the failure of the commission or the executive director to act in a reasonable time on an application to appropriate water or to perform any other duty with reasonable promptness may file a petition to compel the commission or the executive director to show cause why it should not be directed by the court to take immediate action.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1,

1985.

Sec. 5.353. DILIGENT PROSECUTION OF SUIT. The plaintiff shall prosecute with reasonable diligence any suit brought under Section 5.351 or 5.352 of this code. If the plaintiff does not secure proper service of process or does not prosecute his suit within one year after it is filed, the court shall presume that the suit 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.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.354. VENUE. A suit instituted under Section 5.351 or 5.352 of this code must be brought in a district court in Travis County.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.355. APPEAL OF DISTRICT COURT JUDGMENT. A judgment or order of a district court in a suit brought for or against the commission is appealable as are other civil cases in which the district court has original jurisdiction.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.356. APPEAL BY EXECUTIVE DIRECTOR PRECLUDED. A ruling, order, decision, or other act of the commission may not be appealed by the executive director.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.357. LAW SUITS; CITATION. Law suits filed by and against the commission or executive director shall be in the name of the commission. In suits against the commission or executive director, citation may be served on the executive director.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

SUBCHAPTER J. CONSOLIDATED PERMIT PROCESSING

Sec. 5.401. CONSOLIDATED PERMIT PROCESSING. (a) If a plant, facility, or site is required to have more than one permit issued by the commission and the applications for all permits required by the commission are filed within a 30-day period, the commission, on request of the applicant, shall conduct coordinated application reviews and one consolidated permit hearing on all permits requested to be consolidated by the applicant and may issue one consolidated permit. On request of the applicant, the commission shall issue one consolidated permit.

(b) The executive director shall designate one permit program as the lead program for coordination, and that program is the point of contact regarding the consolidated permit.

(c) The executive director may require separate processing of consolidated applications or may return to the applicant parts of an application if the executive director determines that the applicant has submitted an incomplete application or if the applicant does not respond as requested to notices of deficiency.

(d) A federal operating permit governed by the requirements of Sections 382.054-382.0543, Health and Safety Code, may not be consolidated with other permits under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.402. REQUEST FOR SEPARATE PROCESSING. (a) At any time before the public notice of the opportunity to request a hearing on a permit application, the applicant may request that consolidated applications be processed separately as determined by the executive director. The executive director shall process the applications separately if the applicant submits a timely request under this subsection.

(b) At any time after the notice of opportunity to request a hearing but before referral of the matter to the State Office of Administrative Hearings, the executive director may separate the applications for processing on a showing of good cause by the applicant that the applications should be processed separately. For purposes of this subsection, "good cause" includes a change in the statutory or regulatory requirements governing a permit or a substantial change in the factual circumstances surrounding the applications for permits.

(c) After an application has been referred to the State Office of Administrative Hearings, the applicant may have the applications processed separately only on a showing of compliance with commission procedural rules regarding the withdrawal of applications.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.403. RENEWAL PERIOD FOR CONSOLIDATED PERMIT. The renewal period for a consolidated permit issued under this subchapter is the shortest term set by any state or federal statute or rule governing one or more of the authorizations sought in the consolidated permit.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.404. RENEWAL OF PERMITS. A permit issued under this subchapter or a permit issued before and effective on September 1, 1997, that authorizes more than one permit program may be renewed, amended, or modified as a consolidated permit or may be separated by program and the permits may be processed separately and subject to the renewal, amendment, or modification requirements of applicable law governing operations at the facility, plant, or site.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.405. FEES. (a) Except as provided by Subsection (b), the fee for a consolidated permit shall be computed as if the permits consolidated had been processed separately.

(b) The commission by rule may reduce the fee for a

consolidated permit below the total amount that the applicant would have paid for processing the applications separately if the commission finds that consolidated processing results in savings to the agency.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.406. RULES. The commission may adopt rules to effectuate the purposes of this subchapter, including rules providing for:

(1) combined public notices of permits issued under the authority of this section; or

(2) procedures for the processing and issuing of consolidated permits.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER L. EMERGENCY AND TEMPORARY ORDERS

Sec. 5.501. EMERGENCY AND TEMPORARY ORDER OR PERMIT; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITION. (a) For the purposes and in the manner provided by this subchapter, the commission:

(1) may issue a temporary or emergency mandatory, permissive, or prohibitory order; and

(2) by temporary or emergency order may:

(A) issue a temporary permit; or

(B) temporarily suspend or amend a permit condition.

(b) The commission may issue an emergency order under this subchapter after providing the notice and opportunity for hearing that the commission considers practicable under the circumstances or without notice or hearing. Except as provided by Section 5.506, notice must be given not later than the 10th day before the date set for a hearing if the commission requires notice and hearing before issuing the order. The commission shall give notice not later than the 20th day before the date set for a hearing on a temporary order.

(c) The commission by order or rule may delegate to the executive director the authority to:

(1) receive applications and issue emergency orders under this subchapter and Section 13.041(h); and

(2) authorize, in writing, a representative or

representatives to act on the executive director's behalf under this subchapter and Section 13.041(h).

(d) Chapter 2001, Government Code, does not apply to the issuance of an emergency order under this subchapter without a hearing.

(e) A law under which the commission acts that requires notice of hearing or that sets procedures for the issuance of permits does not apply to a hearing on an emergency order issued under this subchapter unless the law specifically requires notice for an emergency order. The commission shall give the general notice of the hearing that the commission considers practicable under the circumstances.

(f) An emergency or temporary order issued under this subchapter does not vest in the permit holder or recipient any rights and expires in accordance with its terms.

(g) The commission may prescribe rules and adopt fees necessary to carry out and administer this subchapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 12, eff. September 1, 2019.

Sec. 5.502. APPLICATION FOR EMERGENCY OR TEMPORARY ORDER. A person other than the executive director or the executive director's representative who desires an emergency or temporary order under this subchapter must submit a sworn written application to the commission. The application must:

(1) describe the condition of emergency or other condition justifying the issuance of the order;

(2) allege facts to support the findings required under this subchapter;

(3) estimate the dates on which the proposed order should begin and end;

(4) describe the action sought and the activity proposed to be allowed, mandated, or prohibited; and

(5) include any other statement or information required by this subchapter or by the commission.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.503. NOTICE OF ISSUANCE. Notice of the issuance of an emergency order shall be provided in accordance with commission rules.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.504. HEARING TO AFFIRM, MODIFY, OR SET ASIDE ORDER. (a) If the commission, the executive director, or the executive director's representative issues an emergency order under this subchapter without a hearing, the order shall set a time and place for a hearing to affirm, modify, or set aside the emergency order to be held before the commission or its designee as soon as practicable after the order is issued.

(b) At or following the hearing required under Subsection (a), the commission shall affirm, modify, or set aside the emergency order.

(c) A hearing to affirm, modify, or set aside an emergency order shall be conducted in accordance with Chapter 2001, Government Code, and commission rules. Commission rules concerning a hearing to affirm, modify, or set aside an emergency order must provide for presentation of evidence by the applicant under oath, presentation of rebuttal evidence, and cross-examination of witnesses.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.505. TERM OF ORDER. An emergency or temporary order issued under this subchapter must be limited to a reasonable time specified by the order. Except as otherwise provided by this subchapter, the term of an emergency order may not exceed 180 days. An emergency order may be renewed once for a period not to exceed 180 days.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR,

BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND INSTREAM USES. (a) The commission by emergency or temporary order may suspend a permit condition relating to beneficial inflows to affected bays and estuaries and instream uses if the commission finds that an emergency exists that cannot practicably be resolved in another way.

(a-1) State water that is set aside by the commission to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471(a)(2) may be made available temporarily for other essential beneficial uses if the commission finds that an emergency exists that cannot practically be resolved in another way.

(b) The commission must give written notice of the proposed action to the Parks and Wildlife Department before the commission suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1). The commission shall give the Parks and Wildlife Department an opportunity to submit comments on the proposed action for a period of 72 hours from receipt of the notice and must consider those comments before issuing an order implementing the proposed action.

(c) The commission may suspend a permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice except as required by Subsection (b).

(d) The commission shall notify all affected persons immediately by publication.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.01, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.02, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.01, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.02, eff. September 1, 2007.

Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. The commission may issue an emergency order appointing a willing

person to temporarily manage and operate a utility under Section 13.4132. Notice of the action is adequate if the notice is mailed or hand delivered to the last known address of the utility's headquarters.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.03, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 3, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 2, eff. September 1, 2015.

Sec. 5.509. TEMPORARY OR EMERGENCY ORDER RELATING TO DISCHARGE OF WASTE OR POLLUTANTS. (a) The commission may issue an emergency or temporary order relating to the discharge of waste or pollutants into or adjacent to water in the state if:

(1) the order is necessary to enable action to be taken more expeditiously than is otherwise provided by Chapter 18 or 26, as applicable, to effectuate the policy and purposes of that chapter; and

(2) the commission finds that:

(A) the discharge is unavoidable to:

(i) prevent loss of life, serious injury, or severe property damage;

(ii) prevent severe economic loss or ameliorate serious drought conditions, to the extent consistent with the requirements for United States Environmental Protection Agency authorization of a state permit program; or

(iii) make necessary and unforeseen repairs to a facility;

(B) there is no feasible alternative to the proposed discharge;

(C) the discharge will not cause significant hazard to human life and health, unreasonable damage to the property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant; and

(D) the discharge will not present a significant hazard

to the uses that will be made of the receiving water after the discharge.

(b) A person desiring a temporary or emergency order under this section must submit an application under Section 5.502 that, in addition to complying with that section:

(1) states the volume and quality of the proposed discharge;

(2) explains the measures proposed to minimize the volume and duration of the discharge; and

(3) explains the measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 2, eff. June 17, 2015.

Sec. 5.510. EMERGENCY ORDER CONCERNING UNDERGROUND OR ABOVEGROUND STORAGE TANKS. (a) The commission may issue an emergency order to the owner or operator of an underground or aboveground storage tank regulated under Chapter 26 prohibiting the owner or operator from allowing or continuing a release or threatened release and requiring the owner or operator to take the actions necessary to eliminate the release or threatened release, if the commission finds that:

(1) there is an actual or threatened release of a regulated substance; and

(2) more expeditious action than is otherwise provided under Chapter 26 is necessary to protect the public health or safety or the environment from harm.

(b) An emergency order issued under this section must be:

(1) mailed by certified mail, return receipt requested, to each person identified in the order;

(2) hand delivered to each person identified in the order; or

(3) on failure of service by certified mail or hand delivery, served by publication one time in the Texas Register and one time in a newspaper with general circulation in each county in

which any of the persons identified in the order has a last known address.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.511. EMERGENCY ADMINISTRATIVE ORDER CONCERNING IMMINENT AND SUBSTANTIAL ENDANGERMENT. The commission or the executive director may issue an emergency administrative order under Section 361.272, Health and Safety Code, in the manner provided by this subchapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.512. EMERGENCY ORDER CONCERNING ACTIVITY OF SOLID WASTE MANAGEMENT. The commission may issue an emergency order concerning an activity of solid waste management under the commission's jurisdiction, even if that activity is not covered by a permit, if the commission finds that an emergency requiring immediate action to protect the public health and safety exists.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.513. EMERGENCY ORDER CONCERNING ON-SITE SEWAGE DISPOSAL SYSTEM. (a) The commission may issue an emergency order suspending the registration of the installer of an on-site sewage disposal system, regulating an on-site sewage disposal system, or both, if the commission finds that an emergency exists and that the public health and safety is endangered because of the operation of an on-site sewage disposal system that does not comply with Chapter 366, Health and Safety Code, or a rule adopted under that chapter.

(b) If an order issued under this section is adopted without notice or hearing, the order must set a time, not more than 30 days after the order is issued, for a hearing to affirm, modify, or set aside the order.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.514. ORDER ISSUED UNDER AIR EMERGENCY. (a) If the commission finds that a generalized condition of air pollution exists that creates an emergency requiring immediate action to protect human health or safety, the commission, with the concurrence of the governor, may issue an emergency order requiring a person causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants.

(b) If the commission finds that emissions from one or more sources are causing imminent danger to human health or safety but that there is not a generalized condition of air pollution under Subsection (a), the commission may issue an emergency order requiring the persons responsible for the emissions to immediately reduce or discontinue the emissions.

(c) Notwithstanding Section 5.504, the commission shall affirm, modify, or set aside an order issued under this section not later than 24 hours after the hearing under that section begins and without adjournment of the hearing.

(d) This section does not limit any power that the governor or another officer may have to declare an emergency and to act on that declaration if the power is conferred by law or inheres in the office.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.5145. EMERGENCY ORDER CONCERNING OPERATION OF ROCK CRUSHER OR CONCRETE PLANT WITHOUT PERMIT. The commission may issue an emergency order under this subchapter suspending operations of a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing and is required to obtain a permit under Section 382.0518, Health and Safety Code, and is operating without the necessary permit.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.08(a), eff. Sept. 1, 2001 and Acts 2001, 77th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1072 (S.B. 1003), Sec. 2, eff. June 17, 2011.

Sec. 5.5146. EMERGENCY ORDER CONCERNING OPERATION OF CERTAIN

TREATMENT FACILITIES WITHOUT PERMIT. The commission may issue an emergency order under this subchapter suspending operations of a treatment facility that:

(1) handles waste and wastewater from humans or household operations;

(2) is required to obtain a permit from the commission; and

(3) is operating without the required permit.

Added by Acts 2015, 84th Leg., R.S., Ch. 806 (H.B. 3264), Sec. 1, eff. June 17, 2015.

Sec. 5.515. EMERGENCY ORDER BECAUSE OF CATASTROPHE. (a) The commission may issue an emergency order authorizing immediate action for the addition, replacement, or repair of facilities or control equipment or the repair or replacement of roads, bridges, or other infrastructure improvements necessitated by a catastrophe occurring in this state and the emission of air contaminants during the addition, replacement, or repair of those facilities, that equipment, or those improvements if the actions and emissions are otherwise precluded under Chapter 382, Health and Safety Code.

(b) An order issued under this section:

(1) may authorize action only:

(A) on property on which a catastrophe has occurred;

(B) on other property that is owned by the owner or operator of the damaged facility and that produces the same intermediates, products, or by-products; or

(C) for a public works project needed to repair or replace a damaged road, bridge, or other infrastructure improvement destroyed during a catastrophe; and

(2) must contain a schedule for submitting a complete application for a permit under Section 382.0518, Health and Safety Code.

(c) The person applying for an emergency order must demonstrate that there will be no more than a de minimis increase in the predicted concentration of air contaminants at or beyond the property line of the other property on which action is authorized under Subsection (b)(1)(B). The commission shall review and act on an application submitted as provided by Subsection (b)(2) without regard to construction activity under an order under this section.

(d) An applicant desiring an emergency order under this section must submit an application under Section 5.502 that, in addition to complying with that section:

(1) describes the catastrophe;

(2) states that:

(A) the construction and emissions are essential to prevent loss of life, serious injury, severe property damage, loss of a critical transportation thoroughfare, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of a facility or control equipment or the repair or replacement of a road, bridge, or other infrastructure improvement necessitated by the catastrophe;

(B) there is no practicable alternative to the proposed construction and emissions; and

(C) the emissions will not cause or contribute to air pollution;

(3) estimates the dates on which the proposed construction or emissions, or both, will begin and end;

(4) estimates the date on which the facility, equipment, or infrastructure improvement will begin operation; and

(5) describes the quantity and type of air contaminants proposed to be emitted.

(e) In this section, "catastrophe" means an unforeseen event, including an act of God, an act of war, severe weather, explosions, fire, or similar occurrences beyond the reasonable control of the applicant, that makes a facility or its related appurtenances or a road, bridge, or other infrastructure improvement inoperable.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 158 (H.B. 2949), Sec. 1, eff. September 1, 2005.

Sec. 5.516. EMERGENCY ORDER UNDER SECTION 401.056, HEALTH AND SAFETY CODE. The commission may issue an emergency order under Section 401.056, Health and Safety Code, in the manner provided by this subchapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER M. ENVIRONMENTAL PERMITTING PROCEDURES

Sec. 5.551. PERMITTING PROCEDURES; APPLICABILITY. (a) This subchapter establishes procedures for providing public notice, an opportunity for public comment, and an opportunity for public hearing under Subchapters C-H, Chapter 2001, Government Code, regarding commission actions relating to a permit issued under Chapter 26 or 27 of this code or Chapter 361, Health and Safety Code. This subchapter is procedural and does not expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for public hearing are provided under Chapter 26 or 27 of this code or Chapter 361, Health and Safety Code.

(a-1) Notwithstanding Section 18.002, this subchapter does not apply to a permit issued under Section 18.005(c)(2) if the point of discharge is not located within three miles of any point located on the coast of this state.

(b) The commission by rule shall provide for additional notice, opportunity for public comment, or opportunity for hearing to the extent necessary to satisfy a requirement for United States Environmental Protection Agency authorization of a state permit program.

(c) In this subchapter, "permit" means a permit, approval, registration, or other form of authorization required by law for a person to engage in an action.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 3, eff. June 17, 2015.

Sec. 5.552. NOTICE OF INTENT TO OBTAIN PERMIT. (a) The executive director shall determine when an application is administratively complete.

(b) Not later than the 30th day after the date the executive director determines the application to be administratively complete:

(1) the applicant shall publish notice of intent to obtain a permit at least once in the newspaper of largest circulation in the county in which the facility to which the application relates is located or proposed to be located or, if the facility to which the application relates is located or proposed to be located in a

municipality, at least once in a newspaper of general circulation in the municipality; and

(2) the chief clerk of the commission shall mail notice of intent to obtain a permit to:

(A) the state senator and representative who represent the general area in which the facility is located or proposed to be located;

(B) the mayor and health authorities of the municipality in which the facility is located or proposed to be located;

(C) the county judge and health authorities of the county in which the facility is located or proposed to be located; and

(D) the river authority in which the facility is located or proposed to be located if the application is under Chapter 26, Water Code.

(c) The commission by rule shall establish the form and content of the notice. The notice must include:

(1) the location and nature of the proposed activity;

(2) the location at which a copy of the application is available for review and copying as provided by Subsection (e);

(3) a description, including a telephone number, of the manner in which a person may contact the commission for further information;

(4) a description, including a telephone number, of the manner in which a person may contact the applicant for further information;

(5) a description of the procedural rights and obligations of the public, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(6) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(7) the time and location of any public meeting to be held under Subsection (f); and

(8) any other information the commission by rule requires.

(d) In addition to providing notice under Subsection (b)(1), the applicant shall comply with any applicable public notice requirements under Chapters 26 and 27 of this code, Chapter 361, Health and Safety Code, and rules adopted under those chapters.

(e) The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located.

(f) The applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility is located or proposed to be located in order to inform the public about the application and obtain public input.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 679, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.553. PRELIMINARY DECISION; NOTICE AND PUBLIC COMMENT. (a) The executive director shall conduct a technical review of and issue a preliminary decision on the application.

(b) The applicant shall publish notice of the preliminary decision in a newspaper.

(c) The commission by rule shall establish the form and content of the notice, the manner of publication, and the duration of the public comment period. The notice must include:

(1) the information required by Sections 5.552(c)(1)-(5);

(2) a summary of the preliminary decision;

(3) the location at which a copy of the preliminary decision is available for review and copying as provided by Subsection (e);

(4) a description of the manner in which comments regarding the preliminary decision may be submitted; and

(5) any other information the commission by rule requires.

(d) In addition to providing notice under this section, the applicant shall comply with any applicable public notice requirements under Chapters 26 and 27 of this code, Chapter 361, Health and Safety Code, and rules adopted under those chapters.

(e) The applicant shall make a copy of the preliminary decision available for review and copying at a public place in the county in which the facility is located or proposed to be located.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

Sec. 5.554. PUBLIC MEETING. During the public comment period, the executive director may hold one or more public meetings in the

county in which the facility is located or proposed to be located. The executive director shall hold a public meeting:

(1) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed activity.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

Sec. 5.555. RESPONSE TO PUBLIC COMMENTS. (a) The executive director, in accordance with procedures provided by commission rule, shall file with the chief clerk of the commission a response to each relevant and material public comment on the preliminary decision filed during the public comment period.

(b) The chief clerk of the commission shall transmit the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:

(1) the applicant;

(2) any person who submitted comments during the public comment period; and

(3) any person who requested to be on the mailing list for the permit action.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

Sec. 5.5553. NOTICE OF DRAFT PERMIT. (a) This section applies only to a permit application that is eligible to be referred for a contested case hearing under Section 5.556 or 5.557.

(b) Notwithstanding any other law, not later than the 30th day before the date the commission issues a draft permit in connection with a permit application, the executive director shall provide written notice to the state senator and state representative of the area in which the facility that is the subject of the permit is located.

Added by Acts 2015, 84th Leg., R.S., Ch. 116 (S.B. 709), Sec. 4, eff.

September 1, 2015.

Sec. 5.556. REQUEST FOR RECONSIDERATION OR CONTESTED CASE HEARING. (a) A person may request that the commission reconsider the executive director's decision or hold a contested case hearing. A request must be filed with the commission during the period provided by commission rule.

(b) The commission shall act on a request during the period provided by commission rule.

(c) The commission may not grant a request for a contested case hearing unless the commission determines that the request was filed by an affected person as defined by Section 5.115.

(d) The commission may not refer an issue to the State Office of Administrative Hearings for a hearing unless the commission determines that the issue:

(1) involves a disputed question of fact;

(2) was raised during the public comment period; and

(3) is relevant and material to the decision on the application.

(e) If the commission grants a request for a contested case hearing it shall:

(1) limit the number and scope of the issues to be referred to the State Office of Administrative Hearings for a hearing; and

(2) consistent with the nature and number of the issues to be considered at the hearing, specify the maximum expected duration of the hearing.

(f) This section does not preclude the commission from holding a hearing if it determines that the public interest warrants doing so.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

Sec. 5.557. DIRECT REFERRAL TO CONTESTED CASE HEARING. (a) Immediately after the executive director issues a preliminary decision on an application under Section 5.553, the commission, on the request of the applicant or the executive director, shall refer the application directly to the State Office of Administrative Hearings for a contested case hearing on whether the application

complies with all applicable statutory and regulatory requirements.

(b) Sections 5.554, 5.555, and 5.556 of this code and Sections 2003.047(e) and (f), Government Code, do not apply to an application referred for a hearing under Subsection (a).

(c) Notwithstanding Subsection (b), the commission by rule shall provide for public comment and the executive director's response to public comment to be entered into the administrative record of decision on an application.

Added by Acts 2001, 77th Leg., ch. 935, Sec. 3, eff. June 14, 2001.

Sec. 5.558. CLEAN COAL PROJECT PERMITTING. (a) As authorized by federal law, the commission by rule shall implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile as defined by Section 382.0565, Health and Safety Code.

(b) When acting under a rule adopted under Subsection (a), the commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons.

(c) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 382, Health and Safety Code, or Subchapters C-G, Chapter 2001, Government Code.

(d) This section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

Added by Acts 2005, 79th Leg., Ch. 1097 (H.B. 2201), Sec. 7, eff. June 18, 2005.

SUBCHAPTER N. ESTUARY MANAGEMENT PLANS

Sec. 5.601. DEFINITIONS. In this subchapter:

(1) "Approved implementation program" means an implementation plan identified as part of an approved comprehensive conservation and management plan.

(2) "Approved comprehensive conservation and management

plan" means an estuary management plan that is prepared through the efforts of citizens, organizations, industries, local governments, and state and national agencies working together as part of the National Estuary Program to develop long-term comprehensive conservation and management plans (CCMPs) and that has been approved by the governor of Texas and the administrator of the United States Environmental Protection Agency to protect the environment and the economies of the state and of the regions with estuaries. The term includes the plans for Galveston Bay and the Coastal Bend estuaries.

(3) "Implementing agency" means the entity identified for day-to-day administration of an estuary program. An implementing agency may be a state agency or other local or regional entity, as identified in an approved estuary management plan.

(4) "National Estuary Program" means the cooperative estuary management program authorized by and developed under Section 320 of the Federal Water Pollution Control Act (33 U.S.C. Section 1330), as amended.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.551 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.602. RECOGNITION OF NATIONAL SIGNIFICANCE OF ESTUARIES OF TEXAS COAST. The state recognizes the state and national significance of estuaries on the Texas coast and that the cooperative efforts created by the National Estuary Program serve a public and state purpose. By virtue of that state purpose, an approved implementation program established under the National Estuary Program is eligible to receive state funds through a grant program administered by the commission.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.552 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.603. FINDING OF BENEFIT AND PUBLIC PURPOSE. The state recognizes the importance of implementing estuary management plans by protecting and improving water quality and restoring estuarine habitat that makes the bays and estuaries productive, protecting the

economies of those areas, and continuing the involvement of the public and the many interests who use and appreciate the estuarine resources of Texas. State and local government participation in estuary programs to protect natural resources serves a public use and benefit. The state and the implementing agencies recognize the prerogatives of local governments and the sanctity of private property rights. No action by an estuary program is intended to usurp the authority of any local government. A local government's participation in or withdrawal from an estuary program is at the sole discretion of the local government and is subject only to the local government's obligation to complete any financial commitment it has made.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.553 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.604. LEAD STATE AGENCY. The commission is the lead state agency for the implementation of approved comprehensive conservation and management plans developed under the National Estuary Program. The commission may accept federal grants for purposes of this subchapter and may award grants and enter into contracts with an implementing agency for the implementation of approved plans under this subchapter.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.554 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.605. STATE AGENCY PARTICIPATION. (a) The following state agencies shall participate and provide assistance to the estuary programs in implementing approved comprehensive conservation and management plans:

(1) the General Land Office;
(2) the Parks and Wildlife Department;
(3) the Texas Department of Transportation;
(4) the Railroad Commission of Texas;
(5) the State Soil and Water Conservation Board;
(6) the Texas Water Development Board; and

(7) the Texas Department of Health.

(b) Other state agencies may participate as necessary or convenient.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.555 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.606. ESTUARY PROGRAM OFFICES. To accomplish the purposes of this subchapter, the estuary program office of any estuary of the state included in the National Estuary Program and for which the commission is the implementing agency shall be maintained in the region of the estuary involved.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.556 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.607. IMPLEMENTATION FUNDING. Funding for the implementation of approved comprehensive conservation and management plans is to be shared by the state, local governments in the area of the estuaries, the federal government, and other participants.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.557 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.608. ELIGIBILITY FOR STATE FUNDING. A comprehensive conservation and management plan is eligible for state funding to assist in implementation of the plan if:

(1) the estuary involved has been designated jointly by the governor and the United States Environmental Protection Agency as an estuary of national significance in accordance with Section 320 of the Federal Water Pollution Control Act (33 U.S.C. Section 1330), as amended; and

(2) the comprehensive conservation and management plan for the estuary involved, together with the accompanying implementation plan, has been completed and approved.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.558 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.609. ADMINISTRATION. The commission, as the lead state agency for administering the state's share of funds, and any state agency designated as an implementing agency for an approved comprehensive conservation and management plan may accept and make grants and enter into contracts to accomplish the actions identified in the approved plan and to further the purposes of this subchapter.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.559 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

SUBCHAPTER P. FEES

Sec. 5.701. FEES. (a) The executive director shall charge and collect the fees prescribed by law. The executive director shall make a record of fees prescribed when due and shall render an account to the person charged with the fees. Each fee is a separate charge and is in addition to other fees unless provided otherwise. Except as otherwise provided, a fee assessed and collected under this section shall be deposited to the credit of the water resource management account.

(1) Notwithstanding other provisions, the commission by rule may establish due dates, schedules, and procedures for assessment, collection, and remittance of fees due the commission to ensure the cost-effective administration of revenue collection and cash management programs.

(2) Notwithstanding other provisions, the commission by rule shall establish uniform and consistent requirements for the assessment of penalties and interest for late payment of fees owed the state under the commission's jurisdiction. Penalties and interest established under this section shall not exceed rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.

(b) Except as otherwise provided by law, the fee for filing an application or petition is $100 plus the cost of any required notice.

The fee for a by-pass permit shall be set by the commission at a reasonable amount to recover costs, but not less than $100.

(c) The fee for filing a water permit application is $100 plus the cost of required notice.

(d) The fee for filing an application for fixing or adjusting rates is $100 plus the cost of required notice.

(e) A person who files with the commission a petition for the creation of a water district or addition of sewage and drainage powers or a resolution for a water district conversion must pay a one-time nonrefundable application fee. The commission by rule may establish the application fee in an amount sufficient to cover the costs of reviewing and processing the application, plus the cost of required notice. The commission may also use the application fee to cover other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Subsection (p). This fee is the only fee that the commission may charge with regard to the processing of an application for creation of a water district, addition of sewage or drainage powers, or conversion under this code.

(f) A person who files a bond issue application with the commission must pay an application fee set by the commission. The commission by rule may set the application fee in an amount not to exceed the costs of reviewing and processing the application, plus the cost of required notice. If the bonds are approved by the commission, the seller shall pay to the commission a percentage of the bond proceeds not later than the seventh business day after receipt of the bond proceeds. The commission by rule may set the percentage of the proceeds in an amount not to exceed 0.25 percent of the principal amount of the bonds actually issued. Proceeds of the fees shall be used to supplement any other funds available for paying expenses of the commission in supervising the various bond and construction activities of the districts filing the applications.

(g) The fee for recording an instrument in the office of the commission is $1.25 per page.

(h) The fee for the use of water for irrigation is 50 cents per acre to be irrigated.

(i) The fee for impounding water, except under Section 11.142 of this code, is 50 cents per acre-foot of storage, based on the total holding capacity of the reservoir at normal operating level.

(j) The fee for other uses of water not specifically named in this section is $1 per acre-foot, except that no political subdivision may be required to pay fees to use water for recharge of underground freshwater-bearing sands and aquifers or for abatement of natural pollution. A fee is not required for a water right that is deposited into the Texas Water Trust.

(k) A fee charged under Subsections (h) through (j) of this section for one use of water under a permit from the commission may not exceed $50,000. The fee for each additional use of water under a permit for which the maximum fee is paid may not exceed $10,000.

(l) The fees prescribed by Subsections (h) through (j) of this section are one-time fees, payable when the application for an appropriation is made. However, if the total fee for a permit exceeds $1,000, the applicant shall pay one-half of the fee when the application is filed and one-half within 180 days after notice is mailed to him that the permit is granted. If the applicant does not pay all of the amount owed before beginning to use water under the permit, the permit is annulled.

(m) If a permit is annulled, the matter reverts to the status of a pending, filed application and, on the payment of use fees as provided by Subsections (h) through (l) of this section together with sufficient postage fees for mailing notice of hearing, the commission shall set the application for hearing and proceed as provided by this code.

(n)(1) Each provider of potable water or sewer utility service shall collect a regulatory assessment from each retail customer as follows:

(A) A public utility as defined in Section 13.002 shall collect from each retail customer a regulatory assessment equal to one percent of the charge for retail water or sewer service.

(B) A water supply or sewer service corporation as defined in Section 13.002 shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

(C) A district as defined in Section 49.001 that provides potable water or sewer utility service to retail customers shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

(2) The regulatory assessment may be listed on the

customer's bill as a separate item and shall be collected in addition to other charges for utility services.

(3) The assessments collected under this subsection may be appropriated by a rider to the General Appropriations Act to an agency with duties related to water and sewer utility regulation or representation of residential and small commercial consumers of water and sewer utility services solely to pay costs and expenses incurred by the agency in the regulation of districts, water supply or sewer service corporations, and public utilities under Chapter 13.

(4) The commission shall annually use a portion of the assessments to provide on-site technical assistance and training to public utilities, water supply or sewer service corporations, and districts. The commission shall contract with others to provide the services.

(5) The commission by rule may establish due dates, collection procedures, and penalties for late payment related to regulatory assessments under this subsection. The executive director shall collect all assessments from the utility service providers.

(6) Repealed by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 55(c), eff. December 1, 2017.

(7) The regulatory assessment does not apply to water that has not been treated for the purpose of human consumption.

(o) A fee imposed under Subsection (j) of this section for the use of saline tidal water for industrial processes shall be $1 per acre-foot of water diverted for the industrial process, not to exceed a total fee of $5,000.

(p) Notwithstanding any other law, fees collected for deposit to the water resource management account under the following statutes may be appropriated and used to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under:

(1) Subsection (b), to the extent those fees are paid by water districts, and Subsections (e), (f), and (n); or

(2) Section 54.037(c).

(q) Notwithstanding any other law, fees collected for deposit to the water resource management account under the following statutes may be appropriated and used to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under:

(1) Subsections (b) and (c), to the extent those fees are

collected in connection with water use or water quality permits;

(2) Subsections (h)-(l);

(3) Section 11.138(g);

(4) Section 11.145;

(5) Section 26.0135(h);

(6) Sections 26.0291, 26.044, and 26.0461; or

(7) Sections 341.041, 366.058, 366.059, 371.024, 371.026, and 371.062, Health and Safety Code.

(r) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1021, Sec. 2.07, eff. September 1, 2011.

Amended by Acts 1985, 69th Leg., ch. 239, Sec. 38, eff. Sept. 1, 1985. Renumbered from Sec. 5.182 and amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 399, Sec. 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 710, Sec. 10, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.021, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 4.01, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 564, Sec. 1.02, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 772, Sec. 1, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1010, Sec. 4.42, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 4.03, eff. Sept. 1, 2001. Redesignated from Sec. 5.235 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 3.02, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 6(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.03, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.03, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 2.07, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 6.03, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 733 (S.B. 1105), Sec. 6, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 867 (H.B. 2771), Sec. 3, eff.

September 1, 2017.

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 55(c), eff. December 1, 2017.

Sec. 5.702. PAYMENT OF FEES REQUIRED WHEN DUE. (a) A fee due the commission under this code or the Health and Safety Code shall be paid on the date the fee is due, regardless of whether the fee is billed by the commission to the person required to pay the fee or is calculated and paid to the commission by the person required to pay the fee.

(b) A person required to pay a fee to the commission may not dispute the assessment of or amount of a fee before the fee has been paid in full.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.703. FEE ADJUSTMENTS. (a) The commission may not consider adjusting the amount of a fee due the commission under this code or the Health and Safety Code:

(1) before the fee has been paid in full; or

(2) if the request for adjustment is received after the first anniversary of the date on which the fee was paid in full.

(b) A person who pays an amount that exceeds the amount of the fee due because the commission incorrectly calculated the fee or the person made a duplicate payment may request a refund of the excess amount paid before the fourth anniversary of the date on which the excess amount was paid.

(c) A request for a refund or credit in an amount that exceeds $5,000 shall be forwarded for approval to the commission fee audit staff, together with an explanation of the grounds for the requested refund or credit. Approval of a refund or credit does not prevent the fee audit staff from conducting a subsequent audit of the person for whom the refund or credit was approved.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.704. NOTICE OF CHANGE IN PAYMENT PROCEDURE. The commission shall promptly notify each person required to pay a commission fee under this code or the Health and Safety Code of any change in fee payment procedures.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.705. NOTICE OF VIOLATION. (a) The commission may issue a notice of violation to a person required to pay a commission fee under this code or the Health and Safety Code for knowingly violating reporting requirements or knowingly calculating the fee in an amount less than the amount actually due.

(b) The executive director may modify audit findings reported by a commission fee auditor only if the executive director provides a written explanation showing good cause for the modification.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.706. PENALTIES AND INTEREST ON DELINQUENT FEES. (a) Except as otherwise provided by law, the commission may collect, for a delinquent fee due the commission under this code or the Health and Safety Code:

(1) a penalty in an amount equal to five percent of the amount of the fee due, if the fee is not paid on or before the day on which the fee is due; and

(2) an additional penalty in an amount equal to five percent of the amount due, if the fee is not paid on or before the 30th day after the date on which the fee was due.

(b) Unless otherwise required by law interest accrues, beginning on the 61st day after the date on which the fee was due, on the total amount of fee and penalties that have not been paid on or before the 61st day after the date on which the fee was due. The yearly interest rate is the rate of interest established for delinquent taxes under Section 111.060, Tax Code.

(c) The executive director may modify a penalty or interest on a fee and penalties authorized by this section if the executive director provides a written explanation showing good cause for the

modification.

(d) Penalties and interest collected by the commission under this section or under other law, unless that law otherwise provides, shall be deposited to the credit of the fund or account to which the fee is required to be deposited.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.707. TRANSFERABILITY OF APPROPRIATIONS AND FUNDS DERIVED FROM FEES. Notwithstanding any law that provides specific purposes for which a fund, account, or revenue source may be used and expended by the commission and that restricts the use of revenues and balances by the commission, the commission may transfer a percentage of appropriations from one appropriation item to another appropriation item consistent with the General Appropriations Act for any biennium authorizing the commission to transfer a percentage of appropriations from one appropriation item to another appropriation item. The use of funds in dedicated accounts under this section for purposes in addition to those provided by statutes restricting their use may not exceed seven percent or $20 million, whichever is less, of appropriations to the commission in the General Appropriations Act for any biennium. A transfer of $500,000 or more from one appropriation item to another appropriation item under this section must be approved by the commission at an open meeting subject to Chapter 551, Government Code.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.708. PERMIT FEE EXEMPTION FOR CERTAIN RESEARCH PROJECTS. (a) In this section:

(1) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(2) "State agency" has the meaning assigned by Section 572.002, Government Code.

(b) If a permit issued by the commission is required for a research project by an institution of higher education or a state agency, payment of a fee is not required for the permit.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

SUBCHAPTER Q. PERFORMANCE-BASED REGULATION

Sec. 5.751. APPLICABILITY. This subchapter applies to programs under the jurisdiction of the commission under Chapters 26, 27, and 32 of this code and Chapters 361, 375, 382, and 401, Health and Safety Code. It does not apply to occupational licensing programs under the jurisdiction of the commission.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.01, eff. September 1, 2011.

Sec. 5.752. DEFINITIONS. In this subchapter:

(1) "Applicable legal requirement" means an environmental law, regulation, permit, order, consent decree, or other requirement.

(2) "Innovative program" means:

(A) a program developed by the commission under this subchapter, Chapter 26 or 27 of this code, or Chapter 361, 382, or 401, Health and Safety Code, that provides incentives to a person in return for benefits to the environment that exceed benefits that would result from compliance with applicable legal requirements under the commission's jurisdiction;

(B) the flexible permit program administered by the commission under Chapter 382, Health and Safety Code;

(C) the regulatory flexibility program administered by the commission under Section 5.758; or

(D) a program established under Section 382.401, Health and Safety Code, to encourage the use of alternative technology for detecting leaks or emissions of air contaminants.

(3) "Permit" includes a license, certificate, registration, approval, permit by rule, standard permit, or other form of authorization issued by the commission under this code or the Health and Safety Code.

(4) "Region" means a region of the commission's field

operations division or that division's successor.

(5) "Strategically directed regulatory structure" means a program that is designed to use innovative programs to provide maximum environmental benefit and to reward compliance performance.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 870 (H.B. 1526), Sec. 2, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.02, eff. September 1, 2011.

Sec. 5.753. STANDARDS FOR EVALUATING AND USING COMPLIANCE HISTORY. (a) Consistent with other law and the requirements necessary to maintain federal program authorization, the commission by rule shall develop standards for evaluating and using compliance history that ensure consistency. In developing the standards, the commission may account for differences among regulated entities.

(b) The components of compliance history must include:

(1) enforcement orders, court judgments, and criminal convictions of this state relating to compliance with applicable legal requirements under the jurisdiction of the commission;

(2) notwithstanding any other provision of this code, orders issued under Section 7.070;

(3) to the extent readily available to the commission, enforcement orders, court judgments, consent decrees, and criminal convictions relating to violations of environmental rules of the United States Environmental Protection Agency; and

(4) changes in ownership.

(c) The set of components must also include any information required by other law or any requirement necessary to maintain federal program authorization.

(d) Except as provided by this subsection, notices of violation must be included as a component of compliance history for a period not to exceed one year from the date of issuance of each notice of violation. The listing of a notice of violation must be preceded by the following statement prominently displayed: "A notice of violation represents a written allegation of a violation of a

specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action nor proof that a violation has actually occurred." A notice of violation administratively determined to be without merit may not be included in a compliance history. A notice of violation that is included in a compliance history shall be removed from the compliance history if the commission subsequently determines the notice of violation to be without merit.

(d-1) For purposes of listing compliance history, the commission may not include as a notice of violation information received by the commission as required by Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.) unless the commission issues a written notice of violation. Final enforcement orders or judgments resulting from self-reported Title V deviations or violations may be considered as compliance history components for purposes of determining compliance history.

(e) Except as required by other law or any requirement necessary to maintain federal program authorization, the commission by rule shall establish a period for compliance history.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.03, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.04, eff. September 1, 2011.

Sec. 5.754. CLASSIFICATION AND USE OF COMPLIANCE HISTORY. (a) The commission by rule shall establish a set of standards for the classification of a person's compliance history as a means of evaluating compliance history. The commission may consider the person's classification when using compliance history under Subsection (e).

(b) Rules adopted under Subsection (a):

(1) must, at a minimum, provide for three classifications of compliance history in a manner adequate to distinguish among:

(A) unsatisfactory performers, or regulated entities that in the commission's judgment perform below minimal acceptable

performance standards established by the commission;

(B) satisfactory performers, or regulated entities that generally comply with environmental regulations; and

(C) high performers, or regulated entities that have an above-satisfactory compliance record;

(2) may establish a category of unclassified performers, or regulated entities for which the commission does not have adequate compliance information about the site; and

(3) must take into account both positive and negative factors related to the operation, size, and complexity of the site, including whether the site is subject to Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.).

(c) In classifying a person's compliance history, the commission shall:

(1) determine whether a violation of an applicable legal requirement is of major, moderate, or minor significance;

(2) establish criteria for classifying a repeat violator, giving consideration to the size and complexity of the site at which the violations occurred, and limiting consideration to violations of the same nature and the same environmental media that occurred in the preceding five years; and

(3) consider:

(A) the significance of the violation and whether the person is a repeat violator;

(B) the size and complexity of the site, including whether the site is subject to Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.); and

(C) the potential for a violation at the site that is attributable to the nature and complexity of the site.

(d) The commission by rule may require a compliance inspection to determine an entity's eligibility for participation in a program that requires a high level of compliance.

(e) The commission by rule shall provide for the use of compliance history in commission decisions regarding:

(1) the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit;

(2) enforcement;

(3) the use of announced inspections; and

(4) participation in innovative programs.

(e-1) The amount of the penalty enhancement or escalation

attributed to compliance history may not exceed 100 percent of the base penalty for an individual violation as determined by the commission's penalty policy.

(f) The assessment methods shall specify the circumstances in which the commission may revoke the permit of a repeat violator and shall establish enhanced administrative penalties for repeat violators.

(g) Rules adopted under Subsection (e) for the use of compliance history shall provide for additional oversight of, and review of applications regarding, facilities owned or operated by a person whose compliance performance is classified as unsatisfactory according to commission standards.

(h) The commission by rule shall, at a minimum, prohibit a person whose compliance history is classified as unsatisfactory according to commission standards from obtaining or renewing a flexible permit under the program administered by the commission under Chapter 382, Health and Safety Code, or participating in the regulatory flexibility program administered by the commission under Section 5.758.

(i) The commission shall consider the compliance history of a regulated entity when determining whether to grant the regulated entity's application for a permit or permit amendment for any activity under the commission's jurisdiction to which this subchapter applies. Notwithstanding any provision of this code or the Health and Safety Code relating to the granting of permits or permit amendments by the commission, the commission, after an opportunity for a hearing, shall deny a regulated entity's application for a permit or permit amendment if the regulated entity's compliance history is unacceptable based on violations constituting a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.05, eff. September 1, 2011.

Sec. 5.755. STRATEGICALLY DIRECTED REGULATORY STRUCTURE. (a) The commission by rule shall develop a strategically directed regulatory structure to provide incentives for enhanced environmental performance.

(b) The strategically directed regulatory structure shall offer incentives based on:

(1) a person's compliance history; and

(2) any voluntary measures undertaken by the person to improve environmental quality.

(c) An innovative program offered as part of the strategically directed regulatory structure must be consistent with other law and any requirement necessary to maintain federal program authorization.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.06, eff. September 1, 2011.

Sec. 5.756. COLLECTION AND ANALYSIS OF COMPLIANCE PERFORMANCE INFORMATION. (a) The commission shall collect data on:

(1) the results of inspections conducted by the commission; and

(2) whether inspections are announced or unannounced.

(b) The commission shall collect data on and make available to the public on the Internet:

(1) the number and percentage of all violations committed by persons who previously have committed the same or similar violations;

(2) the number and percentage of enforcement orders issued by the commission that are issued to entities that have been the subject of a previous enforcement order;

(3) whether a violation is of major, moderate, or minor significance, as defined by commission rule;

(4) whether a violation relates to an applicable legal requirement pertaining to air, water, or waste; and

(5) the region in which the facility is located.

(c) The commission annually shall prepare a comparative analysis of data evaluating the performance, over time, of the

commission and of entities regulated by the commission.

(d) The commission shall include in the annual enforcement report required by Section 5.126 the comparative performance analysis required by Subsection (c), organized by region and regulated medium.

(e) Before compliance performance information about a site may be placed on the Internet under this subchapter, the information must be evaluated through a quality assurance and control procedure, including a 30-day period for the owner or operator of the site to review and comment on the information.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 22.001, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.07, eff. September 1, 2011.

Sec. 5.757. COORDINATION OF INNOVATIVE PROGRAMS. (a) The commission shall designate a single point of contact within the agency to coordinate all innovative programs.

(b) The coordinator shall:

(1) inventory, coordinate, and market and evaluate all innovative programs;

(2) provide information and technical assistance to persons participating in or interested in participating in those programs; and

(3) work with the pollution prevention advisory committee to assist the commission in integrating the innovative programs into the commission's operations, including:

(A) program administration;

(B) strategic planning; and

(C) staff training.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.

Sec. 5.758. REGULATORY FLEXIBILITY. (a) The commission by order may exempt an applicant from a requirement of a statute or

commission rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by an alternative method or by applying an alternative standard that is:

(1) as protective of the environment and the public health as the method or standard prescribed by the statute or commission rule that would otherwise apply; and

(2) not inconsistent with federal law.

(b) The commission may not exempt an applicant under this section unless the applicant can present to the commission evidence that the alternative the applicant proposes is as protective of the environment and the public health as the method or standard prescribed by the statute or commission rule that would otherwise apply.

(c) The commission by rule shall specify the procedure for obtaining an exemption under this section. The rules must provide for public notice and for public participation in a proceeding involving an application for an exemption under this section.

(d) The commission's order must provide a description of the alternative method or standard and condition the exemption on compliance with the method or standard as the order prescribes.

(e) The commission by rule may establish a reasonable fee for applying for an exemption under this section.

(f) A violation of an order issued under this section is punishable as if it were a violation of the statute or rule from which the order grants an exemption.

(g) This section does not authorize exemptions to statutes or regulations for storing, handling, processing, or disposing of low-level radioactive materials.

(h) In implementing the program of regulatory flexibility authorized by this section, the commission shall:

(1) promote the program to businesses in the state through all available appropriate media;

(2) endorse alternative methods that will clearly benefit the environment and impose the least onerous restrictions on business;

(3) fix and enforce environmental standards, allowing businesses flexibility in meeting the standards in a manner that clearly enhances environmental outcomes; and

(4) work to achieve consistent and predictable results for the regulated community and shorter waits for permit issuance.

Added by Acts 1997, 75th Leg., ch. 1203, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 5.123 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 4.02, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.08, eff. September 1, 2011.

SUBCHAPTER R. ACCREDITATION OF ENVIRONMENTAL TESTING LABORATORIES

Sec. 5.801. DEFINITION. In this subchapter, "environmental testing laboratory" means a scientific laboratory that performs analyses to determine the chemical, molecular, or pathogenic components of environmental media for regulatory compliance purposes.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.001 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.802. ADMINISTRATION BY COMMISSION. The commission shall adopt rules for the administration of the voluntary environmental testing laboratory accreditation program established by this chapter. The program must be consistent with national accreditation standards approved by the National Environmental Laboratory Accreditation Program.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.002 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.803. APPLICATION; FEE. (a) To be accredited under the accreditation program adopted under this subchapter, an environmental testing laboratory must submit an application to the commission on a form prescribed by the commission, accompanied by the accreditation fee. The application must contain the information that the commission requires.

(b) The commission by rule shall establish a schedule of reasonable accreditation fees designed to recover the costs of the accreditation program, including the costs associated with:

(1) application review;

(2) initial, routine, and follow-up inspections by the commission; and

(3) preparation of reports.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.003 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.804. ISSUANCE OF ACCREDITATION; RECIPROCITY. (a) The commission may accredit an environmental testing laboratory that complies with the commission requirements established under this subchapter.

(b) The commission by rule may provide for the accreditation of an environmental testing laboratory that is accredited or licensed in another state by an authority that is approved by the National Environmental Laboratory Accreditation Program.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.004 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.805. RULES; MINIMUM STANDARDS. The commission shall adopt rules to implement this subchapter and minimum performance and quality assurance standards for accreditation of an environmental testing laboratory.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.005 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.806. DISCIPLINE. After notice and an opportunity for hearing, the commission may suspend or revoke the accreditation of an environmental testing laboratory that does not comply with the minimum performance and quality assurance standards established under this subchapter.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.006 and amended by

Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.807. ENVIRONMENTAL TESTING LABORATORY ACCREDITATION ACCOUNT. All fees collected under this subchapter shall be deposited to the credit of the environmental testing laboratory accreditation account and may be appropriated to the commission only for paying the costs of the accreditation program.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

CHAPTER 6. TEXAS WATER DEVELOPMENT BOARD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 6.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Executive administrator" means the executive administrator of the board.

(3) "Commission" means the Texas Natural Resource Conservation Commission.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 516, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.056, eff. Aug. 12, 1991.

Sec. 6.002. SCOPE OF CHAPTER. The powers and duties enumerated in this chapter are the general powers and duties of the board and those incidental to the conduct of its business. The board has other specific powers and duties as prescribed in other sections of this code and other laws of this state.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

SUBCHAPTER B. ORGANIZATION OF THE TEXAS WATER DEVELOPMENT BOARD

Sec. 6.011. BOARD AS AGENCY OF STATE. The board is the state agency primarily responsible for water planning and for administering

water financing for the state.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.012. GENERAL DUTIES AND RESPONSIBILITIES. (a) The board has general jurisdiction over:

(1) the development and implementation of a statewide water plan;

(2) the administration of the state's various water assistance and financing programs including those created by the constitution;

(3) the administration of the National Flood Insurance Program; and

(4) other areas specifically assigned to the board by this code or other law.

(b) The board has only those powers and duties previously delegated by law to the Texas Department of Water Resources that are specifically delegated to the board under this code and other laws of this state.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. 1436), Sec. 3, eff. September 1, 2007.

Sec. 6.013. SUNSET PROVISION. The Texas Water Development 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 2023 and every 12th year after 2023 are reviewed.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.20(47), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 5.24(a), eff. Nov. 12, 1991; Acts 2001, 77th Leg., ch. 1234, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 1.13, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 1, eff. September 1, 2011.

Sec. 6.014. CONSTRUCTION OF TITLE. This title shall be liberally construed to allow the board and the executive administrator to carry out their powers and duties in an efficient and effective manner.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

SUBCHAPTER C. TEXAS WATER DEVELOPMENT BOARD

Sec. 6.051. STATE AGENCY. The Texas Water Development Board is an agency of the state.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.052. MEMBERS OF THE BOARD; APPOINTMENT. (a) The board is composed of three members who are appointed by the governor with the advice and consent of the senate. One member must have experience in the field of engineering, one member must have experience in the field of public or private finance, and one member must have experience in the field of law or business.

(b) The governor shall make the appointments in such a manner that the members reflect the diverse geographic regions and population groups of this state and do not have any conflicts of interest prohibited by state or federal law.

(c) 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. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 1.01, eff. September 1, 2013.

Sec. 6.053. ELIGIBILITY FOR MEMBERSHIP. (a) Members of the board must be members of the general public.

(b) A person is not eligible for appointment to the board if the person or the person's spouse:

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

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

(3) uses or receives a substantial amount of tangible goods, services, or funds from the board.

(c) Subsection (b)(1) does not apply to an employee of a political subdivision of this state.

(d) A person is not eligible for appointment to the board if the person served on the board on or before January 1, 2013.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1278 (H.B. 3769), Sec. 2, eff. June 15, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 1.02, eff. September 1, 2013.

Sec. 6.054. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required for appointment to the board;

(2) does not maintain during service on the board the qualifications required for appointment to the board;

(3) is ineligible for membership under Sections 6.053, 6.057, and 6.058;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

(c) If the executive administrator or a member has knowledge that a potential ground for removal exists, the executive administrator shall notify the chairman of the board of the potential ground. The chairman 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 includes the chairman of the board, the executive administrator or another member of the board shall notify the member of the board with the most seniority, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(d) The governor, with the advice and consent of the senate, may remove a board member from office as provided by Section 9, Article XV, Texas Constitution.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 1.03, eff. September 1, 2013.

Sec. 6.055. OFFICERS OF STATE; OATH. Each member of the board is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.056. TERMS OF OFFICE. (a) The members of the board hold office for staggered terms of six years, with the term of one member expiring February 1 of each odd-numbered year. Each member holds office until a successor is appointed and has qualified.

(b) A person appointed to the board may not serve for more than two six-year terms.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 516, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 1.04, eff. September 1, 2013.

Sec. 6.057. 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 a 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.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of water planning or water financing; or

(2) the person's spouse is an officer, employee, or paid consultant of a Texas trade association in the field of water planning or water financing.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 4, eff. Sept. 1, 2001.

Sec. 6.058. LOBBYIST PROHIBITION. A person may not be a 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. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.19(25), eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 1234, Sec. 4, eff. Sept. 1, 2001.

Sec. 6.059. CHAIRMAN OF THE BOARD. The governor shall designate one member as chairman of the board to serve at the will of the governor.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 1.05, eff. September 1, 2013.

Sec. 6.060. BOARD MEETINGS. (a) The board shall hold regular meetings and all hearings at times specified by a board order and entered in its minutes. The board may hold special meetings at the times and places in this state that the board decides are appropriate for the performance of its duties. The chairman of the board or the board member acting for the chairman shall give the other members reasonable notice before holding a special meeting.

(b) The chairman shall preside at all meetings of the board. The chairman may designate another board member to act for the chairman in the chairman's absence.

(c) A majority of the members constitute a quorum to transact business.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 84 (S.B. 1574), Sec. 2, eff. September 1, 2019.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 5, eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 1.06, eff. September 1, 2013.
Acts 2019, 86th Leg., R.S., Ch. 84 (S.B. 1574), Sec. 2, eff. September 1, 2019.

Sec. 6.0601. CONSULTATION REGARDING CERTAIN FINANCIAL MATTERS; CLOSED MEETING. (a) The board may hold a closed meeting to consider and discuss financial matters related to the investment or potential investment of the board's funds.

(b) A final action, decision, or vote on a matter considered or discussed in a closed meeting held under this section must be made in an open meeting conducted in compliance with the notice provisions of Chapter 551, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 626 (S.B. 1386), Sec. 1, eff. September 1, 2019.

Sec. 6.061. FULL-TIME SERVICE. Each member of the board shall serve on a full-time basis.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 1.07, eff. September 1, 2013.

Sec. 6.062. REQUIRED TRAINING FOR BOARD MEMBERS. (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 legislation that created the board;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict of interest laws; 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.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 6, eff. Sept. 1, 2001.

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF THE BOARD

Sec. 6.101. RULES. (a) The board shall adopt rules necessary to carry out the powers and duties of the board provided by this code and other laws of this state.

(b) The executive administrator may recommend to the board for its consideration rules that he considers necessary to carry out the board's powers and duties.

(c) Rules shall be adopted in the manner provided by Chapter 2001, Government Code.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 6.1011. BUDGET APPROVAL. The board shall examine and approve budget recommendations for the board that are to be transmitted to the legislature.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.102. ADVISORY COUNCILS. The board may create and

consult with any advisory councils that the board considers appropriate to carry out its powers and duties.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.103. EXECUTIVE ADMINISTRATOR. The board shall appoint a person to be the executive administrator to serve at the will of the board. A person is not eligible for appointment as the executive administrator if the person served in that capacity on January 1, 2013.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 1.08, eff. September 1, 2013.

Sec. 6.104. MEMORANDA OF UNDERSTANDING. The board may enter into a memorandum of understanding with any other state agency and shall adopt by rule any memorandum of understanding between the board and any other state agency.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 516, Sec. 1, eff. Sept. 1, 1991.

Sec. 6.105. PUBLIC TESTIMONY POLICY. 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. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.106. STANDARDS OF CONDUCT. The executive administrator or the executive administrator's designee shall provide to members of

the board and to agency employees, as often as is necessary, information regarding the requirements for office or employment under this code, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 7, eff. Sept. 1, 2001.

Sec. 6.107. POWER TO ENTER LAND. Any member or employee of the board may enter any person's land, natural waterway, or artificial waterway for the purpose of making an investigation that would, in the judgment of the executive administrator, assist the board in the discharge of its duties.

Added by Acts 1987, 70th Leg., ch. 977, Sec. 3, eff. June 19, 1987.

Sec. 6.108. POWER TO PURCHASE INSURANCE. The board may purchase for its members, appointees, and employees and pay premiums on liability insurance in any amounts and from any insurers the board considers advisable.

Added by Acts 1993, 73rd Leg., ch. 1021, Sec. 1, eff. Aug. 30, 1993.

Sec. 6.109. LIABILITY. Pursuant to the limited waiver of governmental immunity of Chapter 101, Civil Practice and Remedies Code (Texas Tort Claims Act), neither a member of the board nor any employee of the board is personally liable in the person's private capacity for any act performed or for any contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud, in connection with the administration, management, or conduct of the board in its business, programs, or other related affairs.

Added by Acts 1993, 73rd Leg., ch. 1021, Sec. 1, eff. Aug. 30, 1993.

Sec. 6.111. 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 administrator and the staff of the board.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 8, eff. Sept. 1, 2001.

Sec. 6.112. BORDER PROJECTS WEBSITE. (a) In this section, "border region" means the portion of this state located within 100 kilometers of this state's international border.

(b) The board may maintain and update an Internet-based directory of border projects, also know as the Border Activity Tracker, containing information about projects in the border region in which a state agency is involved. The board shall establish guidelines as to which projects and information are to be included in the directory.

(c) Each state agency involved in a project in the border region may electronically submit to the board any information required under this section to be on the Internet-based directory of border projects. Each state agency shall update the information promptly, not less often than quarterly.

Added by Acts 2005, 79th Leg., Ch. 1215 (H.B. 925), Sec. 8, eff. September 1, 2005.

Sec. 6.113. NEGOTIATED RULEMAKING AND 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.

(b) The board'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 board shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 2, eff. September 1, 2011.

Sec. 6.114. FINANCIAL ASSISTANCE PROGRAMS: DEFAULT, REMEDIES, AND ENFORCEMENT. (a) In this section:

(1) "Default" means:

(A) default in payment of the principal of or interest on bonds, securities, or other obligations purchased or acquired by the board;

(B) failure to perform any covenant related to a bond, security, or other obligation purchased or acquired by the board;

(C) a failure to perform any of the terms of a loan, grant, or other financing agreement; or

(D) any other failure to perform an obligation, breach of a term of an agreement, or default as provided by any proceeding or agreement evidencing an obligation or agreement of a recipient, beneficiary, or guarantor of financial assistance provided by the board.

(2) "Financial assistance program recipient" means a recipient or beneficiary of funds administered by the board under this code, including a borrower, grantee, guarantor, or other beneficiary.

(b) In the event of a default and on request by the board, the attorney general shall seek:

(1) a writ of mandamus to compel a financial assistance program recipient or the financial assistance program recipient's officers, agents, and employees to cure the default; and

(2) any other legal or equitable remedy the board and the attorney general consider necessary and appropriate.

(c) A proceeding authorized by this section shall be brought and venue is in a district court in Travis County.

(d) In a proceeding under this section, the attorney general

may recover reasonable attorney's fees, investigative costs, and court costs incurred on behalf of the state in the proceeding in the same manner as provided by general law for a private litigant.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 2, eff. September 1, 2011.

Sec. 6.115. RECEIVERSHIP. (a) In this section, "financial assistance program recipient" has the meaning assigned by Section 6.114.

(b) In addition to the remedies available under Section 6.114, at the request of the board, the attorney general shall bring suit in a district court in Travis County for the appointment of a receiver to collect the assets and carry on the business of a financial assistance program recipient if:

(1) the action is necessary to cure a default by the recipient; and

(2) the recipient is not:

(A) a municipality or county; or

(B) a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(c) The court shall vest a receiver appointed by the court with any power or duty the court finds necessary to cure the default, including the power or duty to:

(1) perform audits;

(2) raise wholesale or retail water or sewer rates or other fees;

(3) fund reserve accounts;

(4) make payments of the principal of or interest on bonds, securities, or other obligations purchased or acquired by the board; and

(5) take any other action necessary to prevent or to remedy the default.

(d) The receiver shall execute a bond in an amount to be set by the court to ensure the proper performance of the receiver's duties.

(e) After appointment and execution of bond, the receiver shall take possession of the books, records, accounts, and assets of the financial assistance program recipient specified by the court. Until discharged by the court, the receiver shall perform the duties that

the court directs and shall strictly observe the final order involved.

(f) On a showing of good cause by the financial assistance program recipient, the court may dissolve the receivership.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 2, eff. September 1, 2011.

SUBCHAPTER E. ADMINISTRATIVE PROVISIONS FOR THE BOARD

Sec. 6.151. 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. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 71, eff. Sept. 1, 1989.

Sec. 6.152. PUBLIC INFORMATION RELATING TO BOARD. The board shall prepare information of public interest describing the functions of the board and describing the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the general public and the appropriate state agencies.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.153. COPIES OF DOCUMENTS, PROCEEDINGS, ETC. (a) Except as otherwise specifically provided in this code and subject to the specific limitations provided in this code, on application of any person, the board shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the board. A certified copy with the seal of the board and the signature of the chairman of the board or the executive administrator is admissible as evidence in any court or administrative proceeding.

(b) The board shall provide in its rules the fees that will be charged for copies and is authorized to furnish copies, certified or

otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the board, except that the fees set by the board for copies prepared by the board shall not exceed those prescribed in Chapter 603, Government Code.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.169; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(13), eff. Sept. 1, 1995.

Sec. 6.154. COMPLAINT FILE. (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 complaint's disposition.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 9, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 3, eff. September 1, 2011.

Sec. 6.155. NOTICE OF COMPLAINT. The board shall periodically notify the complaint parties of the status of the complaint until final disposition.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 9, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 4, eff. September 1, 2011.

Sec. 6.1555. REFERRAL FOR INVESTIGATION OR ENFORCEMENT ACTION.

(a) The board, as the result of a complaint filed with the board or on the board's own motion, may refer an applicant for or recipient of financial assistance from the board to the commission, the state auditor's office, the Texas Rangers, or another state agency, office, or division, as appropriate, for the investigation of, or the initiation of an enforcement action against, the applicant or recipient.

(b) The executive administrator shall transmit the referral to the appropriate state agency, office, or division, monitor the progress of the investigation or enforcement action, and report to the board on a quarterly basis.

Added by Acts 2005, 79th Leg., Ch. 1063 (H.B. 1462), Sec. 1, eff. September 1, 2005.

Sec. 6.156. REPORTS TO GOVERNOR. (a) The board shall make biennial reports in writing to the governor and the members of the legislature. Each report shall include a statement of the activities of the board and its recommendations for necessary and desirable legislation.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1312, Sec. 99(32), eff. September 1, 2013.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 99(32), eff. September 1, 2013.

Sec. 6.1565. APPLICATION REQUIREMENT FOR COLONIAS PROJECTS. (a) In this section, "colonia" means a geographic area that:

(1) is an economically distressed area as defined by Section 17.921;

(2) is located in a county any part of which is within 62 miles of an international border; and

(3) consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241

), Sec. 3.01(6), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(6), eff. September 1, 2019.

(d) Regarding any projects funded by the board that serve colonias by providing water or wastewater services or other assistance, the board shall require an applicant for the funds to submit to the board a colonia classification number, if one exists, for each colonia that may be served by the project proposed in the application. If a colonia does not have a classification number, the board may contact the secretary of state or the secretary of state's representative to obtain the classification number. On request of the board, the secretary of state or the secretary of state's representative shall assign a classification number to the colonia.

Added by Acts 2005, 79th Leg., Ch. 828 (S.B. 827), Sec. 7, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 341 (S.B. 99), Sec. 13, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 2.15, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 2.16, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(6), eff. September 1, 2019.

Sec. 6.157. SEAL. The board shall have a seal bearing the words "Texas Water Development Board" encircling the oak and olive branches common to other official seals.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

SUBCHAPTER F. EXECUTIVE ADMINISTRATOR

Sec. 6.181. GENERAL RESPONSIBILITIES. The executive administrator shall manage the administrative affairs of the board subject to this code and other laws and under the general supervision and direction of the board.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.183. EMPLOYMENT OF PERSONNEL. The executive administrator shall employ necessary personnel for the board. The executive administrator may delegate powers and duties to deputy executive administrators.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 477, Sec. 1, eff. Aug. 30, 1993.

Sec. 6.184. ADMINISTRATIVE ORGANIZATION. The executive administrator, with the approval of the board, may organize and reorganize the administrative sections and divisions of the board in a form and manner that will achieve the greatest efficiency and effectiveness.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.185. INFORMATION REQUEST TO COMMISSION. (a) With regard to any matter pending before the board, the executive administrator may obtain from the commission information relating to that matter.

(b) On receiving a request from the executive administrator, the commission should make the requested information available within 30 days after the information is requested and shall make the requested information available not later than 90 days after the information is requested.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.186. CAREER LADDER PROGRAM. The executive administrator 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.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.187. MERIT PAY. The executive administrator 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.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.188. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive administrator or the executive administrator's designee 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 board 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 board'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 state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 9, eff. Sept. 1, 2001.

Sec. 6.189. APPEARANCES AT HEARINGS. The position of and information developed by the board may be presented by the executive administrator or his designated representative at hearings of the board and commission and at hearings held by federal, state, and local agencies on matters affecting the public's interest in the state's water resources, including matters that have been determined to be policies of the state. The board shall be named a party in any hearing before the commission in which the board requests party status. The board may appeal any ruling, decision, or other act of the commission.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.190. CONTRACTS. (a) The executive administrator, on behalf of the board, may negotiate with and, with the consent of the board, may enter into contracts with the United States or any of its agencies for the purpose of carrying out the powers, duties, and responsibilities of the board.

(b) The executive administrator, on behalf of the board, may negotiate with and, with the consent of the board, may enter into contracts or other agreements with states and political subdivisions of this state or other entity for the purpose of carrying out the powers, duties, and responsibilities of the board.

(c) The executive administrator, on behalf of the board, shall obtain the approval of the attorney general as to the legality of a resolution of the board authorizing state ownership in a project.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.191. TRAVEL EXPENSES. The executive administrator is entitled to receive actual and necessary travel expenses. Other employees of the board are entitled to receive travel expenses as provided by the General Appropriations Act.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.192. GIFTS AND GRANTS. The executive administrator may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out the powers and duties provided by this code.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.193. EMPLOYEE MOVING EXPENSES. If provided by legislative appropriation, the board may pay the costs of transporting and delivering household goods and effects of employees transferred by the executive administrator from one permanent station to another when, in the judgment of the executive administrator, the transfer will serve the best interest of the state.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.194. APPLICATIONS AND OTHER DOCUMENTS. (a) An application, petition, or other document requiring action of the board shall be presented to the executive administrator and handled as provided by this code and in the rules of the board.

(b) After an application, petition, or other document requiring action of the board is processed, it shall be presented to the board for action as required by law and the rules of the board.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.195. NOTICE OF APPLICATION. (a) At the time an application requiring action of the board is filed and is administratively complete, the board shall give notice of the application to any person who may be affected by the granting of the application.

(b) The board shall adopt rules for the notice required by this section.

(c) The notice must state:

(1) the identifying number given the application by the

board;

(2) the name and address of the applicant;

(3) the date on which the application was submitted; and

(4) a brief summary of the information included in the application.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.197. INTELLECTUAL PROPERTY OF BOARD. The executive administrator, with the approval of the board and on the board's behalf, may:

(1) acquire, apply for, register, secure, hold, protect, and renew under the laws of this state, another state, the United States, or any other nation:

(A) a patent for the invention or discovery of:

(i) any new and useful process, machine, manufacture, composition of matter, art, or method;

(ii) any new use of a known process, machine, manufacture, composition of matter, art, or method; or

(iii) any new and useful improvement on a known process, machine, manufacture, composition of matter, art, or method;

(B) a copyright for an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which the work may 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 board uses to identify and distinguish the board'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 reproduction, public performance, display, advertising, marketing, lease, licensing, sale, use, or other distribution of the board's intellectual property;

(3) obtain under a contract described by Subdivision (2) a royalty, license right, or other appropriate means of securing reasonable compensation or thing of nonmonetary value for the

exercise of rights with respect to the board's intellectual property;

(4) waive, increase, or reduce the amount of compensation or thing of nonmonetary value secured by a contract under Subdivision (3) if the executive administrator, with the approval of the board, determines that the waiver, increase, or reduction will:

(A) further a goal or mission of the board; and

(B) result in a net benefit to this state; and

(5) enforce rules adopted to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 382 (S.B. 616), Sec. 1, eff. September 1, 2007.

Sec. 6.198. PURCHASE, DONATION, AND SALE OF PROMOTIONAL ITEMS. (a) The executive administrator, with the approval of the board and on the board's behalf, may purchase, donate, sell, or contract for the sale of items to promote the programs of the board, including:

(1) caps or other clothing;

(2) posters;

(3) banners;

(4) calendars;

(5) books;

(6) prints; and

(7) other items as determined by the board.

(b) The board may use its Internet website to advertise and sell the items described by Subsection (a).

(c) Money received from the sale of a promotional item under this section shall be deposited in the general revenue fund and may be used only by the board to further the purposes and programs of the board.

(d) Section 403.095, Government Code, does not apply to money deposited in the general revenue fund under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1008 (H.B. 4110), Sec. 1, eff. September 1, 2009.

SUBCHAPTER G. JUDICIAL REVIEW

Sec. 6.241. JUDICIAL REVIEW OF ACTS. (a) A person affected by a ruling, order, decision, or other act of the board may file a petition to review, set aside, modify, or suspend the act of the

board.

(b) A person affected by a ruling, order, or decision of the board must file his petition within 30 days after the effective date of the ruling, order, or decision. A person affected by an act other than a ruling, order, or decision must file his petition within 30 days after the date the board performed the act.

(c) Orders, decisions, or other actions of the board pursuant to Subchapters E and F of Chapter 16 and to Chapter 17 of this code are not subject to appeal.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.242. REMEDY FOR BOARD OR EXECUTIVE ADMINISTRATOR INACTION. A person affected by the failure of the board or the executive administrator to act in a reasonable time on an application or to perform any other duty with reasonable promptness may file a petition to compel the board or the executive administrator to show cause why it should not be directed by the court to take immediate action.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.243. DILIGENT PROSECUTION OF SUIT. The plaintiff shall prosecute with reasonable diligence any suit brought under Section 6.241 or 6.242 of this code. If the plaintiff does not secure proper service of process or does not prosecute his suit within one year after it is filed, the court shall presume that the suit 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.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.244. VENUE. A suit instituted under Section 6.241 or

6.242 of this code must be brought in a district court in Travis County.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.245. APPEAL OF DISTRICT COURT JUDGMENT. A judgment or order of a district court in a suit brought for or against the board or the executive administrator is appealable as are other civil cases in which the district court has original jurisdiction.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.246. APPEAL BY EXECUTIVE ADMINISTRATOR PRECLUDED. A ruling, order, decision, or other act of the board may not be appealed by the executive administrator.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

Sec. 6.247. LAW SUITS; CITATION. Law suits filed by and against the board or the executive administrator shall be in the name of the board. In suits against the board or the executive administrator, citation may be served on the executive administrator.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 1.002, eff. Sept. 1, 1985.

CHAPTER 7. ENFORCEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "Permit" includes a license, certificate, registration, approval, or other form of authorization. This definition does not apply to Subchapter G.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.002. ENFORCEMENT AUTHORITY. The commission may initiate an action under this chapter to enforce provisions of this code and the Health and Safety Code within the commission's jurisdiction as provided by Section 5.013 of this code and rules adopted under those provisions. The commission or the executive director may institute legal proceedings to compel compliance with the relevant provisions of this code and the Health and Safety Code and rules, orders, permits, or other decisions of the commission. The commission may delegate to the executive director the authority to issue an administrative order, including an administrative order that assesses penalties or orders corrective measures, to ensure compliance with the provisions of this code and the Health and Safety Code within the commission's jurisdiction as provided by Section 5.013 of this code and rules adopted under those provisions.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 5, eff. September 1, 2009.

Sec. 7.0025. INITIATION OF ENFORCEMENT ACTION USING INFORMATION PROVIDED BY PRIVATE INDIVIDUAL. (a) The commission may initiate an enforcement action on a matter under its jurisdiction under this code or the Health and Safety Code based on information it receives from a private individual if that information, in the commission's judgment, is of sufficient value and credibility to warrant the initiation of an enforcement action.

(b) The executive director or the executive director's designated representative may evaluate the value and credibility of information received from a private individual and the merits of any proposed enforcement action based on that information.

(c) The commission by rule may adopt criteria for the executive director to use in evaluating the value and credibility of information received from a private individual and for use of that information in an enforcement action.

(d) A private individual who submits information on which the

commission relies for all or part of an enforcement case may be called to testify in the enforcement proceedings and is subject to all sanctions under law for knowingly falsifying evidence. If the commission relies on the information submitted by a private individual to prove an enforcement case, any physical or sampling data must have been collected or gathered in accordance with commission protocols.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.24, eff. Sept. 1, 2001.

Sec. 7.00251. INITIATION OF CERTAIN CLEAN AIR ACT ENFORCEMENT ACTIONS USING INFORMATION PROVIDED BY A PERSON. If the commission determines that there are multiple violations based on information it receives as required by Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.) from a person, as defined in Section 382.003, Health and Safety Code, only those that require initiation of formal enforcement will be included in any proposed enforcement action. For all other violations that do not require initiation of formal enforcement, the commission may not include in the enforcement action the following:

(1) violations that are not repeat violations due to the same root cause from two consecutive investigations within the most recent five-year period; or

(2) violations that have been corrected within the time frame specified by the commission or for which the facility has not had the time specified by the commission to correct the violations.

Added by Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 6.01, eff. June 8, 2007.

Sec. 7.0026. SUSPENSION OF ENFORCEMENT ACTION AGAINST CERTAIN REGIONAL WATER, SEWER, OR SOLID WASTE SERVICES. If a water supply, sewer, wastewater treatment, or solid waste disposal service operated by or for a municipality or county is being integrated into a regional water supply, sewer, wastewater treatment, or solid waste disposal service, the commission may enter into a compliance agreement with the regional service under which the commission will not initiate an enforcement action against the regional service for

existing or anticipated violations resulting from the operation by the regional service of the service being integrated. A compliance agreement under this section must include provisions necessary to bring the service being integrated into compliance.

Added by Acts 2003, 78th Leg., ch. 1115, Sec. 1, eff. June 20, 2003.

Sec. 7.003. ENFORCEMENT REPORT. (a) The commission shall report at least once each month on enforcement actions taken by the commission or others and the resolution of those actions.

(b) The report shall be an item for commission discussion at a meeting of the commission for which public notice is given.

(c) If an enforcement action involves a suit filed for injunctive relief or civil penalties, or both, the report shall state the actual or projected time for resolution of the suit. A copy of the report and of the minutes of the meeting reflecting commission action relating to the report shall be filed with the governor and the attorney general.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.004. REMEDIES CUMULATIVE. The remedies under this chapter are cumulative of all other remedies. Nothing in this chapter affects the right of a private corporation or individual to pursue any available common law remedy to abate a condition of pollution or other nuisance, to recover damages to enforce a right, or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.005. EFFECT ON OTHER LAW. This chapter does not exempt a person from complying with or being subject to other law.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.006. ENFORCEMENT POLICIES. (a) The commission by rule

shall adopt a general enforcement policy that describes the commission's approach to enforcement.

(b) The commission shall assess, update, and publicly adopt specific enforcement policies regularly, including policies regarding the calculation of penalties and deterrence to prevent the economic benefit of noncompliance.

(c) The commission shall make the policies available to the public, including by posting the policies on the commission's Internet website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.09, eff. September 1, 2011.

SUBCHAPTER B. CORRECTIVE ACTION AND INJUNCTIVE RELIEF

Sec. 7.031. CORRECTIVE ACTION RELATING TO HAZARDOUS WASTE. (a) The commission shall require corrective action for a release of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility that is required to obtain a permit for the management of hazardous waste and whose permit is issued after November 8, 1984, regardless of when the waste is placed in the unit.

(b) The commission shall establish schedules for compliance for the corrective action if the corrective action cannot be completed before permit issuance and shall require assurances of financial responsibility for completing the corrective action.

(c) If the commission determines that there is or has been a release of hazardous waste into the environment from a facility required to obtain a permit in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), the commission may:

(1) issue an order requiring corrective action or other response measures considered necessary to protect human health or the environment; or

(2) institute a civil action under Subchapter D.

(d) An order issued under this section:

(1) may include a suspension or revocation of authorization to operate;

(2) must state with reasonable specificity the nature of

the required corrective action or other response measure; and

(3) must specify a time for compliance.

(e) If a person named in the order does not comply with the order, the commission may assess an administrative penalty or seek a civil penalty in accordance with this chapter.

(f) Nothing in this section limits the authority of the commission, consistent with federal law, to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 9.07, eff. Sept. 1, 2001.

Sec. 7.032. INJUNCTIVE RELIEF. (a) The executive director may enforce a commission rule or a provision of a permit issued by the commission by injunction or other appropriate remedy.

(b) If it appears that a violation or threat of violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute has occurred or is about to occur, the executive director may have a suit instituted in district court for injunctive relief to restrain the violation or threat of violation.

(c) The suit may be brought in the county in which the defendant resides or in the county in which the violation or threat of violation occurs.

(d) In a suit brought under this section to enjoin a violation or threat of violation described by Subsection (b), the court may grant the commission, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including a temporary restraining order and, after notice and hearing, a temporary injunction or permanent injunction.

(e) On request of the executive director, the attorney general or the prosecuting attorney in a county in which the violation occurs shall initiate a suit in the name of the state for injunctive relief. The suit may be brought independently of or in conjunction with a suit under Subchapter D.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.033. RECOVERY OF SECURITY FOR CHAPTER 401, HEALTH AND SAFETY CODE, VIOLATION. The commission shall seek reimbursement, either by a commission order or by a suit filed under Subchapter D by the attorney general at the commission's request, of security from the radiation and perpetual care account used by the commission to pay for actions, including corrective measures, to remedy spills or contamination by radioactive material resulting from a violation of Chapter 401, Health and Safety Code, relating to an activity under the commission's jurisdiction or a rule adopted or a license, registration, or order issued by the commission under that chapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 580, Sec. 12, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 23, eff. Sept. 1, 2003.

Sec. 7.034. DEFERRAL OF PENALTY FOR CERTAIN UTILITY FACILITIES. (a) In this section:

(1) "District" means any district or authority created under either Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, regardless of how created. The term "district" shall not include any navigation district or port authority created under general or special law or any conservation and reclamation district governed by Chapter 36 unless a special law creating the district or amending the law creating the district states that Chapter 49 applies to the district.

(2) "Municipally owned utility" and "water supply or sewer service corporation" have the meanings assigned by Section 13.002.

(b) The commission may allow a municipally owned utility, a water supply or sewer service corporation, or a district to defer the payment of all or part of an administrative penalty imposed under Subchapter C for a violation on the condition that the entity complies with all provisions for corrective action in a commission order to address the violation.

(c) In determining whether deferral of a penalty under this section is appropriate, the commission shall consider the factors to be considered under Section 7.053 and the following factors:

(1) the financial position of the entity and its ability to

reasonably pay the costs of corrective action under the terms of a commission order;

(2) risks to public health and the environment of any delay in addressing the corrective actions as a result of limited financial resources;

(3) alternatives reasonably available to the entity for paying both the costs of corrective action and the penalty; and

(4) potential effects of the payment of the penalty on other essential public health and safety services for which the entity is responsible.

(d) At the discretion of the commission, any penalty deferred under this section becomes due and payable on a commission determination that the entity is not in compliance with a provision for corrective action in a commission order to address the violation.

Added by Acts 2007, 80th Leg., R.S., Ch. 1005 (H.B. 147), Sec. 1, eff. September 1, 2007.

Sec. 7.035. INJUNCTION AND ENFORCEMENT RELATING TO CERTAIN TREATMENT FACILITIES. (a) Except as provided by Subsection (b), if the commission determines that a treatment facility that handles waste and wastewater from humans or household operations is operating without a permit required by the commission, the commission shall:

(1) issue an order:

(A) enjoining further operation of the facility until the commission issues the required permit; and

(B) imposing an administrative penalty under this chapter; or

(2) institute a civil action under Subchapter D to:

(A) enjoin further operation of the facility until the commission issues the required permit; and

(B) impose a civil penalty.

(b) If the commission determines there is no feasible alternative treatment or disposal option for the wastewater being sent to the treatment facility, including the option of hauling the wastewater to a permitted facility, the commission is not required to enjoin the operation of the facility under Subsection (a) and may impose other applicable penalties under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 806 (H.B. 3264), Sec. 2, eff.

June 17, 2015.

SUBCHAPTER C. ADMINISTRATIVE PENALTIES

Sec. 7.051. ADMINISTRATIVE PENALTY. (a) The commission may assess an administrative penalty against a person as provided by this subchapter if:

(1) the person violates:

(A) a provision of this code or of the Health and Safety Code that is within the commission's jurisdiction;

(B) a rule adopted or order issued by the commission under a statute within the commission's jurisdiction; or

(C) a permit issued by the commission under a statute within the commission's jurisdiction; and

(2) a county, political subdivision, or municipality has not instituted a lawsuit and is not diligently prosecuting that lawsuit under Subchapter H against the same person for the same violation.

(b) This subchapter does not apply to violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health and Safety Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.052. MAXIMUM PENALTY. (a) The amount of the penalty for a violation of Chapter 37 of this code, Chapter 366, 371, or 372, Health and Safety Code, or Chapter 1903, Occupations Code, may not exceed $5,000 a day for each violation.

(b) Except as provided by Subsection (b-3), the amount of the penalty for operating a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing, that is required to obtain a permit under Section 382.0518, Health and Safety Code, and that is operating without the required permit is $10,000. Each day that a continuing violation occurs is a separate violation.

(b-1) The amount of the penalty assessed against a manufacturer that does not label its computer equipment or covered television equipment or adopt and implement a recovery plan as required by Section 361.955, 361.975, or 361.978, Health and Safety Code, as applicable, may not exceed $10,000 for the second violation or

$25,000 for each subsequent violation. A penalty under this subsection is in addition to any other penalty that may be assessed for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code.

(b-2) Except as provided by Subsection (b-1), the amount of the penalty for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code, may not exceed $1,000 for the second violation or $2,000 for each subsequent violation. A penalty under this subsection is in addition to any other penalty that may be assessed for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code.

(b-3) If a person operating a facility as described by Subsection (b) holds any type of permit issued by the commission other than the permit required for the facility, the commission may assess a penalty under Subsection (b) or (c).

(b-4) The amount of the penalty against a facility operator who violates Chapter 505, Health and Safety Code, or a rule adopted or order issued under that chapter may not exceed $500 a day for each day a violation continues with a total not to exceed $5,000 for each violation. The amount of a penalty against a facility operator who violates Chapter 506 or 507, Health and Safety Code, or a rule adopted or order issued under those chapters may not exceed $50 a day for each day a violation continues with a total not to exceed $1,000 for each violation.

(c) The amount of the penalty for all other violations within the jurisdiction of the commission to enforce may not exceed $25,000 a day for each violation.

(d) Except as provided by Subsection (b), each day that a continuing violation occurs may be considered a separate violation. The commission may authorize an installment payment schedule for an administrative penalty assessed under this subchapter, except for an administrative penalty assessed under Section 7.057.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 376, Sec. 3.02, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 880, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 5.08(b), eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1271, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.843, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 333 (S.B. 739), Sec. 1, eff. September

1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1072 (S.B. 1003), Sec. 1, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 33, eff. September 1, 2015.

Sec. 7.0525. PENALTIES FOR VIOLATIONS RELATED TO CERTAIN DRY CLEANING FACILITIES. (a) Except as provided by Subsection (b), the amount of the penalty for a violation of Section 374.252, Health and Safety Code, may not exceed $5,000.

(b) The amount of the penalty for a violation of Section 374.252(a)(3), Health and Safety Code, may not exceed $10,000.

(c) In assessing an administrative penalty under this section, the commission shall consider, in addition to the factors prescribed by Section 7.053, the following factors, if applicable:

(1) the extent to which the violation has or may have an adverse effect on the environment; and

(2) the amount of the reasonable costs incurred by this state in detection and investigation of the violation.

Acts 2003, 78th Leg., ch. 540, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 18, eff. September 1, 2005.

Sec. 7.053. FACTORS TO BE CONSIDERED IN DETERMINATION OF PENALTY AMOUNT. In determining the amount of an administrative penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on the impairment of existing water rights or the hazard or potential hazard created to the health or safety of the public;

(2) the impact of the violation on:

(A) air quality in the region;

(B) a receiving stream or underground water reservoir;

(C) instream uses, water quality, aquatic and wildlife habitat, or beneficial freshwater inflows to bays and estuaries; or

(D) affected persons;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;

(D) economic benefit gained through the violation; and

(E) the amount necessary to deter future violations; and

(4) any other matters that justice may require.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.054. REPORT OF VIOLATION. If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report in accordance with commission rules that includes recommendations regarding any penalty or corrective action.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.055. NOTICE OF REPORT. Not later than the 10th day after the date on which the report of a violation is issued, the executive director shall give written notice of the report, in accordance with commission rules, to the person charged with the violation.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.056. CONSENT. Not later than the 20th day after the date on which notice is received, the person charged may give to the commission written consent to the executive director's report, including the recommended penalty, or make a written request for a hearing.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.057. DEFAULT. If the person charged with the violation consents to the penalty recommended by the executive director or does not timely respond to the notice, the commission by order shall assess the penalty or order a hearing to be held on the recommendations in the executive director's report. If the commission assesses the penalty, the commission shall give written notice of its decision to the person charged.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.058. HEARING. If the person charged requests or the commission orders a hearing, the commission shall order and shall give notice of the hearing. The commission by order may find that a violation has occurred and may assess a penalty, may find that a violation has occurred but that a penalty should not be assessed, or may find that a violation has not occurred. In making a penalty decision, the commission shall analyze each factor prescribed by Section 7.053. All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept.1, 1997.

Sec. 7.059. NOTICE OF DECISION. The commission shall give notice of its decision to the person charged. If the commission finds that a violation has occurred and assesses a penalty, the commission shall give written notice to the person charged of:

(1) the commission's findings;

(2) the amount of the penalty;

(3) the right to judicial review of the commission's order; and

(4) other information required by law.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.060. NOTICE OF PENALTY. If the commission is required to give notice of a penalty under Section 7.057 or 7.059, the commission shall publish notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.061. PAYMENT OF PENALTY; PETITION FOR REVIEW. Within the 30-day period immediately following the date on which the commission's order is final, as provided by Section 2001.144, Government Code, the person charged with the penalty shall:

(1) pay the penalty in full;

(2) pay the first installment penalty payment in full;

(3) pay the penalty and file a petition for judicial review, contesting either the amount of the penalty or the fact of the violation or contesting both the fact of the violation and the amount of the penalty; or

(4) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation and the amount of the penalty.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.062. STAYS. Within the 30-day period described by Section 7.061, a person who acts under Section 7.061(3) 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 that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commission'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 give the supersedeas bond; and

(B) sending a copy of the affidavit to the executive director by certified mail.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.063. CONSENT TO AFFIDAVIT. If the executive director receives a copy of an affidavit under Section 7.062(2), the executive director 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 penalty or give the supersedeas bond.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.064. JUDICIAL REVIEW. Judicial review of the order or decision of the commission assessing the penalty is under Subchapter G, Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.065. PENALTY REDUCED OR NOT ASSESSED. (a) If the person paid the penalty and if the penalty is reduced or not assessed by the court, the executive director shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted.

(b) The accrued interest on amounts remitted by the executive director under this section shall be paid at a rate equal to 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 to the executive director under Section 7.061 and

ending on the day the penalty is remitted.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.066. REFERRAL TO ATTORNEY GENERAL. A person who does not comply with Section 7.061 waives the right to judicial review, and the commission or the executive director may refer the matter to the attorney general for enforcement.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. (a) The commission may compromise, modify, or remit, with or without conditions, an administrative penalty imposed under this subchapter. In determining the appropriate amount of a penalty for settlement of an administrative enforcement matter, the commission may consider a respondent's willingness to contribute to supplemental environmental projects that are approved by the commission, giving preference to projects that benefit the community in which the alleged violation occurred. The commission may encourage the cleanup of contaminated property through the use of supplemental environmental projects. The commission may approve a supplemental environmental project with activities in territory of the United Mexican States if the project substantially benefits territory in this state in a manner described by Subsection (b). Except as provided by Subsection (a-1), the commission may not approve a project that is necessary to bring a respondent into compliance with environmental laws, that is necessary to remediate environmental harm caused by the respondent's alleged violation, or that the respondent has already agreed to perform under a preexisting agreement with a governmental agency.

(a-1) For a respondent that is a local government, the commission:

(1) may approve a supplemental environmental project that is necessary to bring the respondent into compliance with environmental laws or that is necessary to remediate environmental harm caused by the local government's alleged violation; and

(2) shall approve a supplemental environmental project described by Subdivision (1) if the local government:

(A) has not previously committed a violation at the

same site with the same underlying cause in the preceding five years, as documented in a commission order; and

(B) did not agree, before the date that the commission initiated the enforcement action, to perform the project.

(a-2) The commission shall develop a policy to prevent regulated entities from systematically avoiding compliance through the use of supplemental environmental projects under Subsection (a-1)(1), including a requirement for an assessment of:

(1) the respondent's financial ability to pay administrative penalties;

(2) the ability of the respondent to remediate the harm or come into compliance; and

(3) the need for corrective action.

(b) In this section:

(1) "Local government" means a school district, county, municipality, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state.

(2) "Supplemental environmental project" means a project that prevents pollution, reduces the amount of pollutants reaching the environment, enhances the quality of the environment, or contributes to public awareness of environmental matters.

(c) The commission may allow a local government or an organization exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, that receives money from a respondent to implement a supplemental environmental project under this section to use a portion of the money, not to exceed 10 percent of the direct cost of the project, for administrative costs, including overhead costs, personnel salary and fringe benefits, and travel and per diem expenses, associated with implementing the project. Money used for administrative costs under this subsection must be used in accordance with Chapter 783, Government Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 290, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 483, Sec. 7, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 4.03, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.11, eff.

September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 350 (H.B. 2290), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1145 (S.B. 394), Sec. 1, eff. June 19, 2015.

Sec. 7.068. FULL AND COMPLETE SATISFACTION. Payment of an administrative penalty under this subchapter is full and complete satisfaction of the violation for which the penalty is assessed and precludes any other civil or criminal penalty for the same violation.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.069. DISPOSITION OF PENALTY. (a) Except as provided by Subsection (b), a penalty collected under this subchapter shall be deposited to the credit of the general revenue fund.

(b) A penalty collected under Section 7.052(b-1) or (b-2) shall be paid to the commission and deposited to the credit of the waste management account.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 3, eff. September 1, 2007.

Sec. 7.070. FINDINGS OF FACT NOT REQUIRED; RESERVATIONS. Notwithstanding any other provision to the contrary, the commission is not required to make findings of fact or conclusions of law other than an uncontested finding that the commission has jurisdiction in an agreed order compromising or settling an alleged violation of a statute within the commission's jurisdiction or of a rule adopted or an order or a permit issued under such a statute. An agreed administrative order may include a reservation that:

(1) the order is not an admission of a violation of a statute within the commission's jurisdiction or of a rule adopted or an order or a permit issued under such a statute;

(2) the occurrence of a violation is in dispute; or

(3) the order is not intended to become a part of a party's

or a facility's compliance history.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.071. INADMISSIBILITY. An agreed administrative order issued by the commission under this subchapter is not admissible against a party to that order in a civil proceeding unless the proceeding is brought by the attorney general's office to:

(1) enforce the terms of that order; or

(2) pursue a violation of a statute within the commission's jurisdiction or of a rule adopted or an order or a permit issued under such a statute.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.072. RECOVERY OF PENALTY. An administrative penalty owed under this subchapter may be recovered in a civil action brought by the attorney general at the request of the commission.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.073. CORRECTIVE ACTION. If a person violates any statute or rule within the commission's jurisdiction, the commission may:

(1) assess against the person an administrative penalty under this subchapter; and

(2) order the person to take corrective action.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.074. HEARING POWERS. The commission may exercise under this subchapter the hearing powers authorized by Section 26.020.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.075. PUBLIC COMMENT. (a) Before the commission

approves an administrative order or proposed agreement to settle an administrative enforcement action initiated under this subchapter to which the commission is a party, the commission shall allow the public to comment in writing on the proposed order or agreement. Notice of the opportunity to comment shall be published in the Texas Register not later than the 30th day before the date on which the public comment period closes.

(b) The commission shall promptly consider any written comments and may withdraw or withhold consent to the proposed order or agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this subchapter, another statute within the commission's jurisdiction, or a rule adopted or an order or a permit issued under such a statute. Further notice of changes to the proposed order or agreement is not required to be published if those changes arise from comments submitted in response to a previous notice.

(c) This section does not apply to:

(1) a criminal enforcement proceeding; or

(2) an emergency order or other emergency relief that is not a final order of the commission.

(d) Chapter 2001, Government Code, does not apply to public comment under this section.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

SUBCHAPTER D. CIVIL PENALTIES

Sec. 7.101. VIOLATION. A person may not cause, suffer, allow, or permit a violation of a statute within the commission's jurisdiction or a rule adopted or an order or permit issued under such a statute.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.102. MAXIMUM PENALTY. A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter 37 of this code, Chapter 366, 371, or 372, Health and Safety Code, Subchapter G, Chapter 382, Health and Safety Code, or Chapter 1903, Occupations Code, shall be assessed for each

violation a civil penalty not less than $50 nor greater than $5,000 for each day of each violation as the court or jury considers proper. A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to any other matter within the commission's jurisdiction to enforce, other than violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health and Safety Code, shall be assessed for each violation a civil penalty not less than $50 nor greater than $25,000 for each day of each violation as the court or jury considers proper. Each day of a continuing violation is a separate violation.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 376, Sec. 3.03, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 880, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.844, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.09, eff. June 8, 2007.

Sec. 7.1021. MAXIMUM CIVIL PENALTY: VIOLATION OF COMMUNITY RIGHT-TO-KNOW LAWS. (a) A person who knowingly discloses false information or negligently fails to disclose a hazard as required by Chapter 505 or 506, Health and Safety Code, is subject to a civil penalty of not more than $5,000 for each violation.

(b) This section does not affect any other right of a person to receive compensation under other law.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 34, eff. September 1, 2015.

Sec. 7.103. CONTINUING VIOLATIONS. If it is shown on a trial of a defendant that the defendant has previously been assessed a civil penalty for a violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute within the year before the date on which the violation being tried occurred, the defendant shall be assessed a civil penalty not less than $100 nor greater than $25,000 for each subsequent day and for each subsequent violation. Each day of a continuing violation is a separate violation.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.104. NO PENALTY FOR FAILURE TO PAY CERTAIN FEES. A civil penalty may not be assessed for failure to:

(1) pay a fee under Section 371.062, Health and Safety Code; or

(2) file a report under Section 371.024, Health and Safety Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.105. CIVIL SUIT. (a) On the request of the executive director or the commission, the attorney general shall institute a suit in the name of the state for injunctive relief under Section 7.032, to recover a civil penalty, or for both injunctive relief and a civil penalty.

(b) The commission, through the executive director, shall refer a matter to the attorney general's office for enforcement through civil suit if a person:

(1) is alleged to be making or to have made an unauthorized discharge of waste into or adjacent to the waters in the state at a new point of discharge without a permit in violation of state law;

(2) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 26 occurring at the same wastewater management system or other point of discharge within the two years immediately preceding the date of the first alleged violation currently under investigation at that site;

(3) is alleged to be operating a new solid waste facility, as defined in Section 361.003, Health and Safety Code, without a permit in violation of state law;

(4) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 361, Health and Safety Code, occurring at the same facility within the two years immediately preceding the date of the first alleged violation currently under investigation at that site;

(5) is alleged to be constructing or operating a facility at a new plant site without a permit required by Chapter 382, Health and Safety Code, in violation of state law; or

(6) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 382, Health and Safety Code, for violations occurring at the same plant site within the two years immediately preceding the date of the first alleged violation currently under investigation at that site.

(c) The suit may be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.106. RESOLUTION THROUGH ADMINISTRATIVE ORDER. The attorney general's office and the executive director may agree to resolve any violation, before or after referral, by an administrative order issued under Subchapter C by the commission with the approval of the attorney general.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.107. DIVISION OF CIVIL PENALTY. Except in a suit brought for a violation of Chapter 28 of this code or of Chapter 401, Health and Safety Code, a civil penalty recovered in a suit brought under this subchapter by a local government shall be divided as follows:

(1) the first $4.3 million of the amount recovered shall be divided equally between:

(A) the state; and

(B) the local government that brought the suit; and

(2) any amount recovered in excess of $4.3 million shall be awarded to the state.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 543 (H.B. 1794), Sec. 1, eff. September 1, 2015.

Sec. 7.108. ATTORNEY'S FEES. If the state prevails in a suit under this subchapter it may recover reasonable attorney's fees,

court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.109. PARKS AND WILDLIFE DEPARTMENT JURISDICTION. (a) If it appears that a violation or a threat of violation of Section 26.121 or a rule, permit, or order of the commission has occurred or is occurring that affects aquatic life or wildlife, the Parks and Wildlife Department, in the same manner as the commission under this chapter, may have a suit instituted in a district court for injunctive relief or civil penalties, or both, as authorized by this subchapter, against the person who committed or is committing or threatening to commit the violation.

(b) In a suit brought under this section for a violation that is the proximate cause of injury to aquatic life or wildlife normally taken for commercial or sport purposes or to species on which this life is directly dependent for food, the Parks and Wildlife Department is entitled to recover damages for the injury. In determining damages, the court may consider the valuation of the injured resources established in rules adopted by the Parks and Wildlife Department under Subchapter D, Chapter 12, Parks and Wildlife Code, or the replacement cost of the injured resources. Any recovery of damages for injury to aquatic life or wildlife shall be deposited to the credit of the game, fish, and water safety account under Section 11.032, Parks and Wildlife Code, and the Parks and Wildlife Department shall use money recovered in a suit brought under this section to replenish or enhance the injured resources.

(c) The actual cost of investigation, reasonable attorney's fees, and reasonable expert witness fees may also be recovered, and those recovered amounts shall be credited to the same operating accounts from which expenditures occurred.

(d) This section does not limit recovery for damages available under other laws.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.110. COMMENTS. (a) Before the commission approves an agreed final judgment, consent order, voluntary settlement agreement,

or other voluntary settlement agreement, or other voluntary agreement that would finally settle a civil enforcement action initiated under this chapter to which the State of Texas is a party or before the court signs a judgment or other agreement settling a judicial enforcement action other than an enforcement action under Section 113 or 120 or Title II of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), the attorney general shall permit the public to comment in writing on the proposed order, judgment, or other agreement.

(b) Notice of the opportunity to comment shall be published in the Texas Register not later than the 30th day before the date on which the public comment period closes.

(c) The attorney general shall promptly consider any written comments and may withdraw or withhold consent to the proposed order, judgment, or other agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter, the statutes within the commission's jurisdiction, or a rule adopted or an order or a permit issued under such a statute. Further notice of changes to the proposed order, judgment, or other agreement is not required to be published if those changes arise from comments submitted in response to a previous notice.

(d) 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.

(e) This section does not apply to:

(1) criminal enforcement proceedings; or

(2) proposed temporary restraining orders, temporary injunctions, emergency orders, or other emergency relief that is not a final judgment or final order of the court or commission.

(f) Chapter 2001, Government Code, does not apply to public comment under this section.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.111. RECOVERY OF SECURITY FOR CHAPTER 401, HEALTH AND SAFETY CODE, VIOLATION. On request by the commission, the attorney general shall file suit to recover security under Section 7.033.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

SUBCHAPTER E. CRIMINAL OFFENSES AND PENALTIES

Sec. 7.141. DEFINITIONS. In this subchapter:

(1) "Appropriate regulatory agency" means the commission, the Texas Department of Health, or any other agency authorized to regulate the handling and disposal of medical waste.

(2) "Corporation" and "association" have the meanings assigned by Section 1.07, Penal Code, except that the terms do not include a government.

(3) "Large quantity generator" means a person who generates more than 50 pounds of medical waste each month.

(4) "Medical waste" has the meaning assigned by Section 361.003, Health and Safety Code.

(5) "Serious bodily injury" has the meaning assigned by Section 1.07, Penal Code.

(6) "Small quantity generator" means a person who generates 50 pounds or less of medical waste each month.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 407 (H.B. 2244), Sec. 3, eff. June 10, 2015.

Sec. 7.142. VIOLATIONS RELATING TO UNLAWFUL USE OF STATE WATER. (a) A person commits an offense if the person violates:

(1) Section 11.081;

(2) Section 11.083;

(3) Section 11.084;

(4) Section 11.087;

(5) Section 11.088;

(6) Section 11.089;

(7) Section 11.090;

(8) Section 11.091;

(9) Section 11.092;

(10) Section 11.093;

(11) Section 11.094;

(12) Section 11.096;

(13) Section 11.203; or

(14) Section 11.205.

(b) An offense under Subsection (a)(9), (a)(10), or (a)(14) is punishable under Section 7.187(1)(A) or Section 7.187(2)(B) or both.

(c) An offense under Subsection (a)(1), (a)(2), (a)(4), (a)(6), (a)(7), or (a)(8) is punishable under Section 7.187(1)(A) or Section 7.187(2)(C) or both.

(d) An offense under Subsection (a)(3) or (a)(11) is punishable under Section 7.187(1)(A) or Section 7.187(2)(D) or both.

(e) An offense under Subsection (a)(5) is punishable under Section 7.187(1)(A) or Section 7.187(2)(E) or both.

(f) Possession of state water when the right to its use has not been acquired according to Chapter 11 is prima facie evidence of a violation of Section 11.081.

(g) Possession or use of water on a person's land by a person not entitled to the water under this code is prima facie evidence of a violation of Section 11.083.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.143. VIOLATION OF MINIMUM STATE STANDARDS OR MODEL POLITICAL SUBDIVISION RULES. (a) A person commits an offense if the person knowingly or intentionally violates a rule adopted under Subchapter J, Chapter 16.

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

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.145. INTENTIONAL OR KNOWING UNAUTHORIZED DISCHARGE. (a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant:

(1) into or adjacent to water in the state that causes or threatens to cause water pollution unless the waste or pollutant is discharged in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency; or

(2) from a point source in violation of Chapter 26 or of a rule, permit, or order of the appropriate regulatory agency.

(b) An offense under this section is punishable for an

individual under Section 7.187(1)(C) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 934, Sec. 1, eff. June 14, 2001.

Sec. 7.147. UNAUTHORIZED DISCHARGE. (a) A person commits an offense if the person discharges or allows the discharge of any waste or pollutant into any water in the state that causes or threatens to cause water pollution unless the waste or pollutant:

(1) is discharged in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency; or

(2) consists of used oil and the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040.

(b) An offense under this section may be prosecuted without alleging or proving any culpable mental state.

(c) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(D) or both.

(d) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(C).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 366 (S.B. 1297), Sec. 1, eff. September 1, 2005.

Sec. 7.148. FAILURE TO PROPERLY USE POLLUTION CONTROL MEASURES. (a) A person commits an offense if the person intentionally or knowingly tampers with, modifies, disables, or fails to use pollution control or monitoring devices, systems, methods, or practices required by Chapter 26 or a rule adopted or a permit or an order issued under Chapter 26 by the commission or one of its predecessor agencies unless done in strict compliance with the rule, permit, or order.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.149. FALSE STATEMENT. (a) A person commits an offense if the person intentionally or knowingly makes or causes to be made a false material statement, representation, or certification in, or omits or causes to be omitted material information from, an application, notice, record, report, plan, or other document, including monitoring device data, filed or required to be maintained by Chapter 26 or by a rule adopted or a permit or an order issued by the appropriate regulatory agency under Chapter 26.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.150. FAILURE TO NOTIFY OR REPORT. (a) A person commits an offense if the person intentionally or knowingly fails to notify or report to the commission as required under Chapter 26 or by a rule adopted or a permit or an order issued by the appropriate regulatory agency under Chapter 26.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.151. FAILURE TO PAY FEE. (a) A person commits an offense if the person intentionally or knowingly fails to pay a fee required by Chapter 26 or by a rule adopted or a permit or an order issued by the appropriate regulatory agency under Chapter 26.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(H) or Section 7.187(2)(B) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(H).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.152. INTENTIONAL OR KNOWING UNAUTHORIZED DISCHARGE AND KNOWING ENDANGERMENT. (a) A person commits an offense if the person, acting intentionally or knowingly, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action knowingly places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with an order issued or rule adopted by the appropriate regulatory agency.

(b) For purposes of Subsection (a), in determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(c) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(G) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(I) or both.

(d) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.153. INTENTIONAL OR KNOWING UNAUTHORIZED DISCHARGE AND

ENDANGERMENT. (a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(G) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.154. RECKLESS UNAUTHORIZED DISCHARGE AND ENDANGERMENT. (a) A person commits an offense if the person, acting recklessly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(D) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D). If an offense

committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(E).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.155. VIOLATION RELATING TO DISCHARGE OR SPILL. (a) A person commits an offense if the person:

(1) operates, is in charge of, or is responsible for a facility or vessel that causes a discharge or spill as defined by Section 26.263 and does not report the spill or discharge on discovery; or

(2) knowingly falsifies a record or report concerning the prevention or cleanup of a discharge or spill.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is a felony of the third degree.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.156. VIOLATION RELATING TO UNDERGROUND STORAGE TANK. (a) A person or business entity commits an offense if:

(1) the person or business entity engages in the installation, repair, or removal of an underground storage tank and the person or business entity:

(A) does not hold a registration under Section 26.452; and

(B) is not under the substantial control of a person or business entity who holds a registration under Section 26.452;

(2) the person or business entity:

(A) authorizes or allows the installation, repair, or removal of an underground storage tank to be conducted by a person or business entity who does not hold a registration under Section 26.452; or

(B) authorizes or allows the installation, repair, or removal of an underground storage tank to be performed or supervised by a person or business entity who does not hold a license under Section 26.456; or

(3) the conduct of the person or business entity makes the person or business entity responsible for a violation of Subchapter K, Chapter 26, or of a rule adopted or order issued under that subchapter.

(b) A person commits an offense if the person performs or supervises the installation, repair, or removal of an underground storage tank unless:

(1) the person holds a license under Section 26.456; or

(2) another person who holds a license under Section 26.456 is substantially responsible for the performance or supervision of the installation, repair, or removal.

(c) A person commits an offense if the person is an owner or operator of an underground storage tank regulated under Chapter 26 into which any regulated substance is delivered unless the underground storage tank has been issued a valid, current underground storage tank registration and certificate of compliance under Section 26.346.

(d) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1441, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 880, Sec. 4, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. 485), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1256 (H.B. 1987), Sec. 1, eff. September 1, 2005.

Sec. 7.1565. PRESUMPTION. If in the exercise of good faith a person depositing or causing to be deposited a regulated substance into an underground storage tank regulated under Chapter 26 receives a certificate of compliance for that underground storage tank under Section 26.346, the receipt of the certificate of compliance shall be considered prima facie evidence of compliance with this section.

Added by Acts 1999, 76th Leg., ch. 1441, Sec. 5, eff. Sept. 1, 1999.

Sec. 7.157. VIOLATION RELATING TO INJECTION WELLS. (a) A person commits an offense if the person knowingly or intentionally

violates Chapter 27 or a rule adopted or an order or a permit issued under Chapter 27.

(b) An offense under this section is punishable under Section 7.187(1)(B).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.158. VIOLATION RELATING TO PLUGGING WELLS. (a) A person commits an offense if the person is the owner of a well that is required to be cased or plugged by Chapter 28 and the person:

(1) fails or refuses to case or plug the well within the 30-day period following the date of the commission's order to do so; or

(2) fails to comply with any other order issued by the commission under Chapter 28 within the 30-day period following the date of the order.

(b) An offense under this section is a misdemeanor and is punishable under Section 7.187(1)(A).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.159. VIOLATION RELATING TO WATER WELLS OR DRILLED OR MINED SHAFTS. (a) A person commits an offense if the person knowingly or intentionally violates Chapter 28 or a commission rule adopted or an order or a permit issued under that chapter.

(b) An offense under this section is punishable under Section 7.187(1)(B).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.160. VIOLATION RELATING TO CERTAIN SUBSURFACE EXCAVATIONS. (a) A person commits an offense if the person knowingly or intentionally violates Chapter 31 or a commission rule adopted or an order or a permit issued under that chapter.

(b) An offense under this section is punishable under Section 7.187(1)(B).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.161. VIOLATION RELATING TO SOLID WASTE IN ENCLOSED CONTAINERS OR VEHICLES. (a) An operator of a solid waste facility or a solid waste hauler commits an offense if the operator or hauler disposes of solid waste in a completely enclosed container or vehicle at a solid waste site or operation permitted as a Type IV landfill:

(1) without having in possession the special permit required by Section 361.091, Health and Safety Code;

(2) on a date or time not authorized by the commission; or

(3) without a commission inspector present to verify that the solid waste is free of putrescible, hazardous, and infectious waste.

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

(c) This section does not apply to:

(1) a stationary compactor that is at a specific location and that has an annual permit under Section 361.091, Health and Safety Code, issued by the commission, on certification to the commission by the generator that the contents of the compactor are free of putrescible, hazardous, or infectious waste; or

(2) an enclosed vehicle of a municipality if the vehicle has a permit issued by the commission to transport brush or construction-demolition waste and rubbish on designated dates, on certification by the municipality to the commission that the contents of the vehicle are free of putrescible, hazardous, or infectious waste.

(d) In this section, "putrescible waste" means organic waste, such as garbage, wastewater treatment plant sludge, and grease trap waste, that may:

(1) be decomposed by microorganisms with sufficient rapidity as to cause odors or gases; or

(2) provide food for or attract birds, animals, or disease vectors.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.162. VIOLATIONS RELATING TO HAZARDOUS WASTE. (a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct:

(1) transports, or causes or allows to be transported, for storage, processing, or disposal, any hazardous waste to any location that does not have all required permits;

(2) stores, processes, exports, or disposes of, or causes to be stored, processed, exported, or disposed of, any hazardous waste without all permits required by the appropriate regulatory agency or in knowing violation of any material condition or requirement of a permit or of an applicable interim status rule or standard;

(3) omits or causes to be omitted material information or makes or causes to be made any false material statement or representation in any application, label, manifest, record, report, permit, plan, or other document filed, maintained, or used to comply with any requirement of Chapter 361, Health and Safety Code, applicable to hazardous waste;

(4) generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, hazardous waste, whether the activity took place before or after September 1, 1981, and who knowingly destroys, alters, conceals, or does not file, or causes to be destroyed, altered, concealed, or not filed, any record, application, manifest, report, or other document required to be maintained or filed to comply with the rules of the appropriate regulatory agency adopted under Chapter 361, Health and Safety Code;

(5) transports without a manifest, or causes or allows to be transported without a manifest, any hazardous waste required by rules adopted under Chapter 361, Health and Safety Code, to be accompanied by a manifest;

(6) tampers with, modifies, disables, or fails to use required pollution control or monitoring devices, systems, methods, or practices, unless done in strict compliance with Chapter 361, Health and Safety Code, or with an order, rule, or permit of the appropriate regulatory agency;

(7) releases, causes, or allows the release of a hazardous waste that causes or threatens to cause pollution, unless the release is made in strict compliance with all required permits or an order, rule, or permit of the appropriate regulatory agency; or

(8) does not notify or report to the appropriate regulatory agency as required by Chapter 361, Health and Safety Code, or by a rule adopted or an order or a permit issued by the appropriate

regulatory agency under that chapter.

(b) An offense under Subsection (a)(1) or (a)(2) is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(G) or both. An offense under Subsection (a)(3), (a)(4), or (a)(5) is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(E) or both. An offense under Subsection (a)(6), (a)(7), or (a)(8) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, an offense under Subsection (a)(1) or (a)(2) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(G) or both, and an offense under Subsection (a)(3), (a)(4), or (a)(5) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(F) or both.

(d) An offense under Subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) is punishable for a person other than an individual under Section 7.187(1)(D). If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under Subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), the offense is punishable under Section 7.187(1)(E). An offense under Subsection (a)(6), (a)(7), or (a)(8) is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.163. VIOLATIONS RELATING TO HAZARDOUS WASTE AND ENDANGERMENT. (a) A person commits an offense if:

(1) acting intentionally or knowingly, the person transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous waste in violation of Chapter 361, Health and Safety Code, and by that action knowingly places another person in imminent danger of death or serious bodily injury;

(2) acting intentionally or knowingly with respect to the person's conduct, transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous waste in violation of Chapter 361, Health and Safety Code, and by that action places another person in imminent

danger of death or serious bodily injury, unless the conduct charged is done in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency;

(3) acting intentionally or knowingly with respect to the person's conduct, releases or causes or allows the release of a hazardous waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or an order issued or a rule adopted by the appropriate regulatory agency; or

(4) acting recklessly with respect to the person's conduct, releases or causes or allows the release of a hazardous waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or an order issued or a rule adopted by the appropriate regulatory agency.

(b) An offense under Subsection (a)(1) is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(H) or both. An offense under Subsection (a)(1) is punishable for a person other than an individual under Section 7.187(1)(F). If an offense committed by an individual under Subsection (a)(1) results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(F) or Section 7.187(2)(J) or both. If an offense committed by a person other than an individual under Subsection (a)(1) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(G). For purposes of Subsection (a)(1), in determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(c) An offense under Subsection (a)(2) is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. An offense under Subsection (a)(2) is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed under Subsection (a)(2) results in death or serious bodily

injury to another person, an individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(G) or both. If an offense committed by a person other than an individual under Subsection (a)(2) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

(d) An offense under Subsection (a)(3) is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. An offense under Subsection (a)(3) is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by an individual under Subsection (a)(3) results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(G) or both. If an offense committed by a person other than an individual under Subsection (a)(3) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

(e) An offense under Subsection (a)(4) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both. An offense under Subsection (a)(4) is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by an individual under Subsection (a)(4) results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(E) or both. If an offense committed by a person other than an individual under Subsection (a)(4) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.164. VIOLATIONS RELATING TO MEDICAL WASTE: LARGE GENERATOR. (a) A person commits an offense if the person is a large quantity generator and the person, acting intentionally or knowingly with respect to the person's conduct:

(1) generates, collects, stores, processes, exports, or disposes of, or causes or allows to be generated, collected, stored, processed, exported, or disposed of, any medical waste without all permits required by the appropriate regulatory agency or in knowing violation of a material condition or requirement of a permit or of an applicable interim status rule or standard; or

(2) generates, collects, stores, treats, transports, or

disposes of, or causes or allows to be generated, collected, stored, treated, transported, or disposed of, or otherwise handles any medical waste, and knowingly destroys, alters, conceals, or does not file a record, report, manifest, or other document required to be maintained or filed under rules adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(G) or both. If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(I) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(B). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable by Section 7.187(1)(C).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.165. VIOLATIONS RELATING TO MEDICAL WASTE: SMALL GENERATOR. (a) A person commits an offense if the person is a small quantity generator and the person, acting intentionally or knowingly with respect to the person's conduct:

(1) generates, collects, stores, processes, exports, or disposes of, or causes or allows to be generated, collected, stored, processed, exported, or disposed of, any medical waste without all permits required by the appropriate regulatory agency or in knowing violation of any material condition or requirement of a permit or of an applicable interim status rule or standard; or

(2) generates, collects, stores, treats, transports, or disposes of, or causes or allows to be generated, collected, stored, treated, transported, or disposed of, or otherwise handles any medical waste, and knowingly destroys, alters, conceals, or does not file a record, report, manifest, or other document required to be maintained or filed under rules adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(A). If it is shown on the trial of

an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(C) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(B). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(C).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.166. VIOLATIONS RELATING TO TRANSPORTATION OF MEDICAL WASTE. (a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct:

(1) transports, or causes or allows to be transported, for storage, processing, or disposal, any medical waste to a location that does not have all required permits;

(2) transports without a manifest, or causes or allows to be transported without a manifest, any medical waste required to be accompanied by a manifest under rules adopted by the appropriate regulatory agency; or

(3) operates a vehicle that is transporting medical waste, or that is authorized to transport medical waste, in violation of a rule adopted by the appropriate regulatory agency, including cleaning and safety regulations, that specifically relates to the transportation of medical waste.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(D) or both. If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(E) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.167. FALSE STATEMENTS RELATING TO MEDICAL WASTE. (a) A person commits an offense if the person knowingly:

(1) makes a false material statement, or knowingly causes or knowingly allows to be made a false material statement, to a person who prepares a regulated medical waste label, manifest, application, permit, plan, registration, record, report, or other document required by an order or a rule of the appropriate regulatory agency; or

(2) omits material information, or causes or allows material information to be omitted, from a regulated medical waste label, manifest, application, permit, plan, registration, record, report, or other document required by an order or a rule of the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(D) or both. If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(E) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(B). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(C).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.168. INTENTIONAL OR KNOWING VIOLATION RELATING TO MEDICAL WASTE AND KNOWING ENDANGERMENT. (a) A person commits an offense if the person, acting intentionally or knowingly, transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, medical waste in violation of Chapter 361, Health and Safety Code, and by that action knowingly places another person in imminent danger of death or serious bodily injury.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(H) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is

punishable for an individual under Section 7.187(1)(F) or Section 7.187(2)(J) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(F). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(G).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.169. INTENTIONAL OR KNOWING VIOLATION RELATING TO MEDICAL WASTE AND ENDANGERMENT. (a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, transports, processes, stores, exports, or disposes of medical waste in violation of Chapter 361, Health and Safety Code, and by that action places another person in imminent danger of death or serious bodily injury, unless the conduct charged is done in strict compliance with all required permits or with an order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(G) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.170. INTENTIONAL OR KNOWING RELEASE OF MEDICAL WASTE INTO ENVIRONMENT AND ENDANGERMENT. (a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, releases or causes or allows the release of a medical waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless

the release is done in strict compliance with all required permits or an order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(G) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(G) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.171. RECKLESS RELEASE OF MEDICAL WASTE INTO ENVIRONMENT AND ENDANGERMENT. (a) A person commits an offense if the person, acting recklessly with respect to a person's conduct, releases or causes or allows the release of a medical waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or an order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(D) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(E) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.172. FAILURE OF SEWAGE SYSTEM INSTALLER TO REGISTER.

(a) A person commits an offense if the person violates Section 366.071, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1. 1997.

Sec. 7.173. VIOLATION RELATING TO SEWAGE DISPOSAL. (a) A person commits an offense if the person violates a rule adopted by the commission under Chapter 366, Health and Safety Code, or an order or resolution adopted by an authorized agent under Subchapter C, Chapter 366, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 824, Sec. 1, eff. Sept. 1, 1999.

Sec. 7.1735. VIOLATION RELATING TO MAINTENANCE OF SEWAGE DISPOSAL SYSTEM. (a) A person commits an offense if the person knowingly violates an order or resolution adopted by an authorized agent under Section 366.0515, Health and Safety Code.

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

Added by Acts 2005, 79th Leg., Ch. 1129 (H.B. 2510), Sec. 3, eff. September 1, 2005.

Sec. 7.174. VIOLATION OF SEWAGE DISPOSAL SYSTEM PERMIT PROVISION. (a) A person commits an offense if the person begins to construct, alter, repair, or extend an on-site sewage disposal system owned by another person before the owner of the system obtains a permit to construct, alter, repair, or extend the on-site sewage

disposal system as required by Subchapter D, Chapter 366, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.175. EMERGENCY REPAIR NOT AN OFFENSE. An emergency repair to an on-site sewage disposal system without a permit in accordance with the rules adopted under Section 366.012(a)(1)(C), Health and Safety Code, is not an offense under Section 7.172, 7.173, or 7.174 if a written statement describing the need for the repair is provided to the commission or its authorized agent not later than 72 hours after the repair is begun.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.176. VIOLATIONS RELATING TO HANDLING OF USED OIL. (a) A person commits an offense if the person:

(1) intentionally discharges used oil into:

(A) a sewer or septic tank; or

(B) a drainage system, surface water or groundwater, a watercourse, or marine water unless the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040;

(2) knowingly mixes or commingles used oil with solid waste that is to be disposed of in landfills or directly disposes of used oil on land or in landfills, unless the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is incident to and the unavoidable result of the dismantling or mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals;

(3) knowingly transports, treats, stores, disposes of, recycles, causes to be transported, or otherwise handles any used oil

within the state:

(A) in violation of standards or rules for the management of used oil; or

(B) without first complying with the registration requirements of Chapter 371, Health and Safety Code, and rules adopted under that chapter;

(4) intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment;

(5) violates an order of the commission to cease and desist an activity prohibited by this section or a rule applicable to a prohibited activity; or

(6) intentionally makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of program compliance.

(b) It is an exception to the application of this section that a person unknowingly disposes into the environment any used oil that has not been properly segregated or separated by the generator from other solid wastes.

(c) It is an exception to the application of Subsection (a)(2) that the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is incident to and the unavoidable result of the dismantling or mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals.

(d) Except as provided by this subsection, an offense under this section is punishable under Section 7.187(1)(B) or Section 7.187(2)(F), or both. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(C) or Section 7.187(2)(H) or both.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 38 (S.B. 1299), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 366 (S.B. 1297), Sec. 2, eff. September 1, 2005.

Sec. 7.177. VIOLATIONS OF CLEAN AIR ACT. (a) A person commits an offense if the person intentionally or knowingly, with respect to the person's conduct, violates:

(1) Section 382.0518(a), Health and Safety Code;

(2) Section 382.054, Health and Safety Code;

(3) Section 382.056(a), Health and Safety Code;

(4) Section 382.058(a), Health and Safety Code; or

(5) an order, permit, or exemption issued or a rule adopted under Chapter 382, Health and Safety Code.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(C) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(C).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.178. FAILURE TO PAY FEES UNDER CLEAN AIR ACT. (a) A person commits an offense if the person intentionally or knowingly does not pay a fee required by Chapter 382, Health and Safety Code, or by a rule adopted or an order issued under that chapter.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(H) or Section 7.187(2)(B) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(H).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.179. FALSE REPRESENTATIONS UNDER CLEAN AIR ACT. (a) A person commits an offense if the person intentionally or knowingly makes or causes to be made a false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or does not file or maintain a notice, application, record, report, plan, or other document required to be filed or maintained by Chapter 382, Health and Safety Code, or by a rule adopted or a permit or order issued under that chapter.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.180. FAILURE TO NOTIFY UNDER CLEAN AIR ACT. (a) A person commits an offense if the person intentionally or knowingly does not notify or report to the commission as required by Chapter 382, Health and Safety Code, or by a rule adopted or a permit or order issued under that chapter.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.181. IMPROPER USE OF MONITORING DEVICE. (a) A person commits an offense if the person intentionally or knowingly tampers with, modifies, disables, or fails to use a required monitoring device; tampers with, modifies, or disables a monitoring device; or falsifies, fabricates, or omits data from a monitoring device, unless the act is done in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.182. RECKLESS EMISSION OF AIR CONTAMINANT AND ENDANGERMENT. (a) A person commits an offense if the person recklessly, with respect to the person's conduct, emits an air contaminant that places another person in imminent danger of death or serious bodily injury, unless the emission is made in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.183. INTENTIONAL OR KNOWING EMISSION OF AIR CONTAMINANT AND KNOWING ENDANGERMENT. (a) A person commits an offense if the person intentionally or knowingly, with respect to the person's conduct, emits an air contaminant with the knowledge that the person is placing another person in imminent danger of death or serious bodily injury unless the emission is made in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.1831. VIOLATION OF LOCALLY ENFORCED MOTOR VEHICLE IDLING LIMITATIONS. (a) A person commits an offense if the person violates a rule adopted by the commission concerning locally enforced motor vehicle idling limitations.

(b) Notwithstanding any other law, an offense under this section is a Class C misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 294 (H.B. 1906), Sec. 1, eff. September 1, 2011.

Sec. 7.184. VIOLATIONS RELATING TO LOW-LEVEL RADIOACTIVE WASTE. (a) A person commits an offense if the person:

(1) intentionally or knowingly violates a provision of Chapter 401, Health and Safety Code, other than the offense described by Subdivision (2); or

(2) intentionally or knowingly receives, processes, concentrates, stores, transports, or disposes of low-level radioactive waste without a license issued under Chapter 401, Health

and Safety Code.

(b) Except as provided by this subsection, an offense under Subsection (a)(1) is a Class B misdemeanor. If it is shown on the trial of the person that the person has previously been convicted of an offense under Subsection (a)(1), the offense is a Class A misdemeanor.

(c) Except as provided by this subsection, an offense under Subsection (a)(2) is a Class A misdemeanor. If it is shown on the trial of the person that the person has previously been convicted of an offense under Subsection (a)(2), the offense is punishable under Section 7.187(1)(D) or Section 7.187(2)(D) or both.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 38, eff. Sept. 1, 1999.

Sec. 7.185. KNOWING OR INTENTIONAL UNAUTHORIZED DISPOSAL OF LEAD-ACID BATTERIES. (a) A person commits an offense if the person knowingly or intentionally disposes of a lead-acid battery other than as provided by Section 361.451, Health and Safety Code.

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

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.1851. VIOLATIONS RELATING TO COMMUNITY RIGHT-TO-KNOW LAWS. (a) A person who proximately causes an occupational disease or injury to an individual by knowingly disclosing false information or knowingly failing to disclose hazard information as required by Chapter 505 or 506, Health and Safety Code, commits an offense punishable by a fine of not more than $25,000.

(b) This section does not affect any other right of a person to receive compensation under other law.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 35, eff. September 1, 2015.

Sec. 7.186. SEPARATE OFFENSES. Each day a person engages in conduct proscribed by this subchapter constitutes a separate offense.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.187. PENALTIES. (a) Except as provided by Subsection (b), a person convicted of an offense under this subchapter is punishable by:

(1) a fine, as imposed under the section creating the offense, of:

(A) not more than $1,000;

(B) not less than $1,000 or more than $50,000;

(C) not less than $1,000 or more than $100,000;

(D) not less than $1,000 or more than $250,000;

(E) not less than $2,000 or more than $500,000;

(F) not less than $5,000 or more than $1,000,000;

(G) not less than $10,000 or more than $1,500,000; or

(H) not more than twice the amount of the required fee;

(2) confinement for a period, as imposed by the section creating the offense, not to exceed:

(A) 30 days;

(B) 90 days;

(C) 180 days;

(D) one year;

(E) two years;

(F) five years;

(G) 10 years;

(H) 15 years;

(I) 20 years; or

(J) 30 years; or

(3) both fine and confinement, as imposed by the section creating the offense.

(b) Notwithstanding Section 7.177(a)(5), conviction for an offense under Section 382.018, Health and Safety Code, is punishable as:

(1) a Class C misdemeanor if the violation is a first violation and does not involve the burning of heavy oils, asphaltic materials, potentially explosive materials, or chemical wastes;

(2) a Class B misdemeanor if the violation is a second or subsequent violation and:

(A) the violation does not involve the burning of:

(i) substances described by Subdivision (1); or

(ii) insulation on electrical wire or cable, treated lumber, plastics, non-wood construction or demolition materials, furniture, carpet, or items containing natural or synthetic rubber; or

(B) the violation involves the burning of substances described by Paragraph (A)(ii) and none of the prior violations involved the burning of substances described by Subdivision (1) or Paragraph (A)(ii); or

(3) a Class A misdemeanor if the violation:

(A) involves the burning of substances described by Subdivision (1); or

(B) is a second or subsequent violation and involves the burning of substances described by Subdivision (2)(A)(ii) and one or more of the prior violations involved the burning of substances described by Subdivision (1) or (2)(A)(ii).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1264 (H.B. 857), Sec. 1, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 145 (H.B. 1619), Sec. 2, eff. September 1, 2017.

Sec. 7.188. REPEAT OFFENSES. If it is shown at the trial of the defendant that the defendant has previously been convicted of the same offense under this subchapter, the maximum punishment is doubled with respect to both the fine and confinement, unless the section creating the offense specifies otherwise.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.189. VENUE. Venue for prosecution of an alleged violation under this subchapter is in:

(1) the county in which the violation is alleged to have occurred;

(2) the county where the defendant resides;

(3) if the alleged violation involves the transportation of a discharge, waste, or pollutant, any county to which or through which the discharge, waste, or pollutant was transported; or

(4) Travis County.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.190. DISPOSITION OF FINES. A fine recovered through a prosecution brought under this subchapter shall be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, the court may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.191. NOTICE OF CONVICTION. In addition to a sentence that may be imposed under this subchapter, a person other than an individual that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court considers appropriate.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.192. JUDGMENT OF CONVICTION. On conviction under this subchapter, the clerk of the court in which the conviction is returned shall send a copy of the judgment to the commission.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.193. PEACE OFFICERS. For purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are peace officers. Those agents and employees are empowered to enforce this subchapter the same as any other peace officer and for that purpose have the powers and duties of peace officers assigned by Chapter 2, Code of Criminal Procedure.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.194. ALLEGATIONS. In alleging the name of a defendant private corporation, it is sufficient to state in the complaint, indictment, or information the corporate name or to state any name or designation by which the corporation is known or may be identified. It is not necessary to allege that the defendant was lawfully incorporated.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.195. SUMMONS AND ARREST. (a) After a complaint is filed or an indictment or information presented against a private corporation under this subchapter, the court or clerk shall issue a summons to the corporation. The summons shall be in the same form as a capias except that:

(1) it shall summon the corporation to appear before the court named at the place stated in the summons;

(2) it shall be accompanied by a certified copy of the complaint, indictment, or information; and

(3) it shall provide that the corporation appear before the court named at or before 10 a.m. of the Monday next after the expiration of 20 days after it is served with summons, except when service is made on the secretary of state, in which instance the summons shall provide that the corporation appear before the court named at or before 10 a.m. of the Monday next after the expiration of 30 days after the secretary of state is served with summons.

(b) No individual may be arrested upon a complaint, indictment, or information against a private corporation.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.196. SERVICE OF SUMMONS. (a) A peace officer shall serve a summons on a private corporation by personally delivering a copy of it to the corporation's registered agent for service. If a registered agent has not been designated or cannot with reasonable diligence be found at the registered office, the peace officer shall serve the summons by personally delivering a copy of it to the president or a vice president of the corporation.

(b) If the peace officer certifies on the return that the peace officer diligently but unsuccessfully attempted to effect service

under Subsection (a) or if the corporation is a foreign corporation that has no certificate of authority, the peace officer shall serve the summons on the secretary of state. On receipt of the summons copy, the secretary of state shall immediately forward it by certified or registered mail, return receipt requested, addressed to the defendant corporation at its registered office or, if it is a foreign corporation, at its principal office in the state or country under whose law it was incorporated.

(c) The secretary of state shall keep a permanent record of the date and time of receipt and the disposition of each summons served under Subsection (b) together with the return receipt.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.197. ARRAIGNMENT AND PLEADINGS. In any criminal action instituted against a private corporation under this subchapter:

(1) appearance is for the purpose of arraignment; and

(2) the corporation has 10 full days after the day the arraignment takes place and before the day the trial begins to file written pleadings.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.198. APPEARANCE. (a) A defendant private corporation appears through counsel or its representative.

(b) If a private corporation does not appear in response to summons or appears but does not plead, the corporation is considered to be present in person for all purposes, and the court shall enter a plea of not guilty on the corporation's behalf and may proceed with trial, judgment, and sentencing.

(c) After appearing and entering a plea in response to summons, if a private corporation is absent without good cause at any time during later proceedings, the corporation is considered to be present in person for all purposes, and the court may proceed with trial, judgment, or sentencing.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.199. FINE TREATED AS JUDGMENT IN CIVIL ACTION. If a person other than an individual is found guilty of a violation of this subchapter and a fine is imposed, the fine shall be entered and docketed by the clerk of the court as a judgment against the person, and the fine shall be of the same force and effect and be enforced against the person in the same manner as if the judgment were recovered in a civil action.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.200. EFFECT ON CERTAIN OTHER LAWS. Conduct punishable as an offense under this subchapter that is also punishable under another law may be prosecuted under either law.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.201. DEFENSE EXCLUDED. It is not a defense to prosecution under this subchapter that the person did not know of or was not aware of a rule, order, or statute.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.202. PROOF OF KNOWLEDGE. In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury under Section 7.168, 7.169, 7.170, or 7.171, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, however, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.203. CRIMINAL ENFORCEMENT REVIEW. (a) This section is applicable to criminal prosecution of alleged environmental

violations of this code, of the Health and Safety Code, or of any other statute, rule, order, permit, or other decision of the commission that is within the commission's jurisdiction committed by a defendant holding a permit issued by the commission or a defendant employed by a person holding such a permit and that is related to the activity for which the permit was issued. This section does not apply to an alleged environmental violation that clearly involves imminent danger of death or bodily injury under an endangerment offense specified in Section 7.252. Nothing in this section limits the power of a peace officer to arrest a person for an alleged offense.

(b) Before a peace officer, as that term is defined in Section 7.193 or Chapter 2, Code of Criminal Procedure, may refer any alleged criminal environmental violation by a person holding a permit issued by the commission or an employee of that person of this code, of the Health and Safety Code, or of any other statute, rule, order, permit, or other decision of the commission that is within the commission's jurisdiction to a prosecuting attorney for criminal prosecution, the peace officer shall notify the commission in writing of the alleged criminal environmental violation and include with the notification a report describing the facts and circumstances of the alleged criminal environmental violation. This section does not prohibit a peace officer from issuing a citation or making an arrest.

(c) As soon as practicable and in no event later than the 45th day after receiving a notice and report under Subsection (b), the commission shall evaluate the report and determine whether an alleged environmental violation exists and whether administrative or civil remedies would adequately and appropriately address the alleged environmental violation. In making its evaluation and determination, the commission shall consider the factors prescribed in Section 7.053. If the commission does not make a determination within the 45-day period required by this subsection:

(1) the appropriate prosecuting attorney may bring an action for criminal prosecution; and

(2) notwithstanding Subsection (e), the commission or the state is not entitled to receive any part of an amount recovered through a prosecution brought by that prosecuting attorney.

(d) If the commission determines that an alleged environmental violation exists and that administrative or civil remedies are inadequate or inappropriate to address the violation, the commission

shall notify the peace officer in writing of the reasons why administrative or civil remedies are inadequate or inappropriate and recommending criminal prosecution, and the prosecuting attorney may proceed with the criminal prosecution of the alleged violation. In all other cases, the commission shall issue written notification to the peace officer that the alleged environmental violation is to be resolved through administrative or civil means by the appropriate authorities and the reasons why administrative or civil remedies are adequate or appropriate. A prosecuting attorney may not prosecute an alleged violation if the commission determines that administrative or civil remedies are adequate and appropriate.

(e) Any fine, penalty, or settlement recovered through a prosecution subject to this section and brought in the name and by authority of the State of Texas, whether recovered through any form of pretrial resolution, plea agreement, or sentencing after trial, shall be apportioned 70 percent to the state to cover the costs of instituting the procedures and requirements of Subsections (a)-(d) and 30 percent to any local government significantly involved in prosecuting the case. In a case where the procedures described in this section do not apply, the provisions of Section 7.190 apply.

Added by Acts 2003, 78th Leg., ch. 937, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER F. DEFENSES

Sec. 7.251. ACT OF GOD. If a person can establish that an event that would otherwise be a violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of that statute, rule, order, or permit.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.252. DEFENSES TO ENDANGERMENT OFFENSES. It is an affirmative defense to prosecution under Section 7.152, 7.153, 7.154, 7.163, 7.168, 7.169, 7.170, 7.171, 7.182, or 7.183 that:

(1) the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of the person's occupation, business,

or profession or a medical treatment or medical or scientific experimentation conducted by professionally approved methods and the person endangered had been made aware of the risks involved before giving consent; or

(2) the person charged was an employee who was carrying out the person's normal activities and was acting under orders from the person's employer, unless the person charged engaged in knowing and wilful violations.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.253. DEFENSES AVAILABLE TO PERSON RESPONSIBLE FOR SOLID WASTE VIOLATIONS. (a) For purposes of an enforcement action initiated under this chapter, a person responsible for solid waste under Section 361.271, Health and Safety Code, is liable for a violation of a statutory or regulatory prohibition against releasing or creating an imminent threat of releasing solid waste unless the person can establish by a preponderance of the evidence that the release or threatened release was caused solely by an act or omission of a third person and that the defendant:

(1) exercised due care concerning the solid waste, considering the characteristics of the solid waste, in light of all relevant facts and circumstances; and

(2) took precautions against foreseeable acts or omissions of the third person and the consequences that could foreseeably result from those acts or omissions.

(b) The defense under Subsection (a) does not apply if the third person:

(1) is an employee or agent of the defendant; or

(2) has a direct or indirect contractual relationship with the defendant and the act or omission of the third person occurred in connection with the contractual relationship. The term "contractual relationship" includes land contracts, deeds, or other instruments transferring title or possession of real property.

(c) A defendant who enters into a contractual relationship as provided by Subsection (b)(2) is not liable under a statute or rule within the commission's jurisdiction if:

(1) the sole contractual relationship is acceptance for rail carriage by a common carrier under a published tariff; or

(2) the defendant acquired the real property on which the facility requiring the remedial action is located after the disposal or placement of the hazardous substance on, in, or at the facility, and the defendant establishes by a preponderance of the evidence that:

(A) the defendant exercised due care concerning the solid waste, considering the characteristics of the solid waste, in light of all relevant facts and circumstances; and

(B) the defendant took precautions against foreseeable acts or omissions of the third person and the consequences that could foreseeably result from those acts or omissions; or

(C) at the time the defendant acquired the facility the defendant did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(D) the defendant is a governmental entity that acquired the facility by escheat, by other involuntary transfer or acquisition, or by the exercise of the power of eminent domain; or

(E) the defendant acquired the facility by inheritance or bequest.

(d) To demonstrate the condition under Subsection (c)(2)(C), the defendant must have made, at the time of acquisition, appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. In deciding whether the defendant meets this condition, the court shall consider:

(1) any specialized knowledge or experience of the defendant;

(2) the relationship of the purchase price to the value of the property if the property were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

(4) the obvious presence or likely presence of contamination of the property; and

(5) the defendant's ability to detect the contamination by appropriate inspection.

(e) This section does not decrease the liability of a previous owner or operator of a facility who is liable under a statute or rule within the commission's jurisdiction. If the defendant obtained actual knowledge of the release or threatened release of a hazardous

substance at a facility at the time the defendant owned the real property on which the facility is located and subsequently transferred ownership of the property to another person without disclosing that knowledge, the defendant is liable and a defense under this section is not available to the defendant.

(f) Subsections (c), (d), and (e) do not affect the liability, under a statute or rule within the commission's jurisdiction, of a defendant who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action concerning the facility.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.254. DEFENSE TO USED OIL OFFENSES. It is an affirmative defense to prosecution under Section 7.176 that the person unknowingly disposed of used oil into the environment because the used oil had not been properly segregated or separated by the generator from other solid wastes.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.255. DEFENSE EXCLUDED. Unless otherwise provided by this chapter, the fact that a person holds a permit issued by the commission does not relieve that person from liability for the violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.256. COMPLIANCE WITH FEDERAL OCCUPATIONAL SAFETY AND HEALTH STANDARDS. If a person can establish that an act or event that otherwise would be a violation of a statute within the commission's jurisdiction or a rule adopted or an order or permit issued by the commission under such a statute was caused solely by compliance with the general duty clause of the federal Occupational Safety and Health Act of 1970 (29 U.S.C. Section 654), the act or event is not a violation of that statute, rule, order, or permit.

Added by Acts 2009, 81st Leg., R.S., Ch. 513 (S.B. 1080), Sec. 1, eff. September 1, 2009.

Sec. 7.257. DEFENSE TO NUISANCE OR TRESPASS. (a) A person, as defined by Section 382.003, Health and Safety Code, who is subject to an administrative, civil, or criminal action brought under this chapter for nuisance or trespass arising from greenhouse gas emissions has an affirmative defense to that action if the person's actions that resulted in the alleged nuisance or trespass were authorized by a rule, permit, order, license, certificate, registration, approval, or other form of authorization issued by the commission or the federal government or an agency of the federal government and:

(1) the person was in substantial compliance with that rule, permit, order, license, certificate, registration, approval, or other authorization while the alleged nuisance or trespass was occurring; or

(2) the commission or the federal government or an agency of the federal government exercised enforcement discretion in connection with the actions that resulted in the alleged nuisance or trespass.

(b) This section does not apply to nuisance actions solely based on a noxious odor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 909 (S.B. 875), Sec. 1, eff. June 17, 2011.

SUBCHAPTER G. REVOCATION AND SUSPENSION OF PERMITS, LICENSES, CERTIFICATES, AND REGISTRATIONS

Sec. 7.301. DEFINITION. In this subchapter:

(1) "License," "certificate," "registration," and "exemption" have the meanings assigned by commission rule.

(2) "Permit holder" or "holder of a permit" includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20 percent of the permit holder.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.302. GROUNDS FOR REVOCATION OR SUSPENSION OF PERMIT. (a) This section applies to a permit or exemption issued by the commission under:

(1) Section 18.005 of this code;

(2) Chapter 26, 27, 28, or 31 of this code;

(3) Subchapter C or R, Chapter 361, Health and Safety Code;

(4) Subchapter D, Chapter 366, Health and Safety Code;

(5) Chapter 382, Health and Safety Code; or

(6) a rule adopted under any of those provisions.

(b) After notice and hearing, the commission may revoke, suspend, or revoke and reissue a permit or exemption on any of the following grounds:

(1) violating any term or condition of the permit, and revocation, suspension, or revocation and reissuance is necessary in order to maintain the quality of water or the quality of air in the state, or to otherwise protect human health and the environment consistent with the objectives of the statutes or rules within the commission's jurisdiction;

(2) having a record of environmental violations in the preceding five years at the permitted or exempted site;

(3) causing a discharge, release, or emission contravening a pollution control standard set by the commission or contravening the intent of a statute or rule described in Subsection (a);

(4) including a material mistake in a federal operating permit issued under Chapter 382, Health and Safety Code, or making an inaccurate statement in establishing an emissions standard or other term or condition of a federal operating permit;

(5) misrepresenting or failing to disclose fully all relevant facts in obtaining the permit or misrepresenting to the commission any relevant fact at any time;

(6) a permit holder being indebted to the state for fees, payment of penalties, or taxes imposed by the statutes or rules within the commission's jurisdiction;

(7) a permit holder failing to ensure that the management of the permitted facility conforms or will conform to the statutes and rules within the commission's jurisdiction;

(8) the permit is subject to cancellation or suspension under Section 26.084;

(9) abandoning the permit or operations under the permit; or

(10) the commission finds that a change in conditions requires elimination of the discharge authorized by the permit.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 376, Sec. 3.04, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 4, eff. June 17, 2015.

Sec. 7.303. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, CERTIFICATE, OR REGISTRATION. (a) This section applies to a license, certificate, or registration issued:

(1) by the commission under:

(A) Section 26.0301;

(B) Chapter 37;

(C) Section 361.0861, 361.092, or 361.112, Health and Safety Code;

(D) Chapter 366, 371, or 401, Health and Safety Code; or

(E) Chapter 1903, Occupations Code;

(2) by a county under Subchapter E, Chapter 361, Health and Safety Code; or

(3) under a rule adopted under any of those provisions.

(b) After notice and hearing, the commission may suspend or revoke a license, certificate, or registration the commission or a county has issued, place on probation a person whose license, certificate, or registration has been suspended, reprimand the holder of a license, certificate, or registration, or refuse to renew or reissue a license, certificate, or registration on any of the following grounds:

(1) having a record of environmental violations in the preceding five years;

(2) committing fraud or deceit in obtaining the license, certificate, or registration;

(3) demonstrating gross negligence, incompetency, or misconduct while acting as holder of a license, certificate, or

registration;

(4) making an intentional misstatement or misrepresentation of fact in information required to be maintained or submitted to the commission by the holder of the license, certificate, or registration;

(5) failing to keep and transmit records as required by a statute within the commission's jurisdiction or a rule adopted under such a statute;

(6) being indebted to the state for a fee, payment of a penalty, or a tax imposed by a statute within the commission's jurisdiction or a rule adopted under such a statute;

(7) with respect to a license or registration issued under Section 26.0301 or Chapter 37, violating a discharge permit of a sewage treatment plant, unless:

(A) the holder of the license or registration is unable to properly operate the sewage treatment or collection facility due to the refusal of the permit holder to authorize necessary expenditures to operate the sewage treatment or collection facility properly; or

(B) failure of the sewage treatment or collection facility to comply with its discharge permit results from faulty design of the facility;

(8) with respect to a license or registration issued under Chapter 37 of this code or Chapter 366, Health and Safety Code, violating either chapter or a rule adopted under either chapter; or

(9) with respect to a license issued under Subchapter E, Chapter 361, Health and Safety Code, violating that chapter or another applicable law or a commission rule governing the processing, storage, or disposal of solid waste.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 376, Sec. 3.05, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 880, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 18.001, eff. Sept. 1, 2003.

Sec. 7.304. SUSPENSION OF REGISTRATION OR REIMBURSEMENT PAYMENT ISSUED UNDER WASTE TIRE RECYCLING PROGRAM. Notwithstanding Sections 7.303, 7.305, and 7.306, the commission may suspend a registration of or reimbursement payment to a waste tire processor, waste tire

transporter, waste tire generator, waste tire recycling facility, or waste tire energy recovery facility, without notice or hearing, on the initiation of an enforcement proceeding under this chapter and while the proceeding is pending for a violation of Subchapter P, Chapter 361, Health and Safety Code, or a rule adopted or order issued under that subchapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept.1, 1997.

Sec. 7.305. PROCEDURES. The commission by rule shall establish procedures for public notice and any public hearing under this subchapter. The procedures shall provide for notice to a county that issued a license, certificate, or registration that is the subject of the hearing.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.306. HEARINGS. A hearing under this subchapter shall be conducted in accordance with the hearing rules adopted by the commission and the applicable provisions of Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.307. CONSENT. If the holder of a permit, license, certificate, or registration requests or consents to the revocation or suspension of the permit, license, certificate, or registration, the executive director may revoke or suspend the permit, license, exemption, certificate, or registration without a hearing.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.308. OTHER RELIEF. A proceeding brought by the commission under this subchapter does not affect the commission's authority to bring suit for injunctive relief or penalty or both under this chapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.309. PROBATION REQUIREMENTS. If a license, certificate, or registration suspension is probated, the commission may require the holder of the license, certificate, or registration:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit activities to the areas prescribed by the commission; or

(3) to continue or renew professional education until the registrant attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.310. REVOCATION OR SUSPENSION BY COUNTY. With respect to a license, certificate, or registration issued by a county under a statute or rule within the commission's jurisdiction, the issuing county may suspend or revoke the license, certificate, or registration on the grounds provided under Section 7.303.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

SUBCHAPTER H. SUIT BY OTHERS

Sec. 7.351. CIVIL SUITS. (a) Subject to Section 7.3511, if it appears that a violation or threat of violation of Chapter 16, 26, or 28 of this code, Chapter 361, 371, 372, or 382, Health and Safety Code, a provision of Chapter 401, Health and Safety Code, under the commission's jurisdiction, or Chapter 1903, Occupations Code, or a rule adopted or an order or a permit issued under those chapters or provisions has occurred or is occurring in the jurisdiction of a local government, the local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.

(b) Subject to Section 7.3511, if it appears that a violation or threat of violation of Chapter 366, Health and Safety Code, under the commission's jurisdiction or a rule adopted or an order or a permit issued under that chapter has occurred or is occurring in the jurisdiction of a local government, an authorized agent as defined in that chapter may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 193, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.845, eff. Sept. 1, 2003. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 857 (H.B. 2533), Sec. 1, eff. September 1, 2017.

Sec. 7.3511. PROCEDURE FOR CIVIL PENALTY; REQUIRED NOTICE. (a) In this section:

(1) "Authorized agent" has the meaning assigned by Section 366.002, Health and Safety Code.

(2) "Person affected" has the meaning assigned by Section 401.003, Health and Safety Code.

(b) This section applies only to a claim for a civil penalty in a civil suit under this subchapter for a violation of a statute, rule, order, or permit described by Section 7.351.

(c) Before instituting any claim described by Subsection (b), a local government, a person affected, or an authorized agent shall provide to the attorney general and the executive director of the commission written notice of each alleged violation, the facts in support of the claim, and the specific relief sought.

(d) A local government, a person affected, or an authorized agent may institute a claim described by Subsection (b) on or after the 90th day after the date the attorney general and the executive director of the commission receive the notice required by Subsection (c) unless before the 90th day after the date the notice is received the commission has commenced a proceeding under Subchapter C or the attorney general has commenced a civil suit under Subchapter D

concerning at least one of the alleged violations set forth in the notice.

(e) If a local government, a person affected, or an authorized agent discovers a violation that is within 120 days of the expiration of the limitations period described in Section 7.360, the local government, person affected, or authorized agent may institute a claim described by Subsection (b) on or after the 45th day after the date the attorney general and the executive director of the commission receive the notice required by Subsection (c) unless before the 45th day after the date the notice is received the commission has commenced a proceeding under Subchapter C or the attorney general has commenced a civil suit under Subchapter D concerning at least one of the alleged violations set forth in the notice. In the circumstances described by this subsection, in addition to providing the notice required by Subsection (c), the local government, person affected, or authorized agent must:

(1) provide a copy of the notice by certified mail or hand delivery to the chief of the division of the attorney general's office responsible for handling environmental enforcement claims; and

(2) include with the copy of the notice under Subdivision (1) a statement providing that the copy of the notice is being provided pursuant to this subsection.

Added by Acts 2017, 85th Leg., R.S., Ch. 857 (H.B. 2533), Sec. 2, eff. September 1, 2017.

Sec. 7.352. RESOLUTION REQUIRED. In the case of a violation of Chapter 26 of this code or Chapter 382, Health and Safety Code, a local government may not exercise the enforcement power authorized by this subchapter unless its governing body adopts a resolution authorizing the exercise of the power.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.353. COMMISSION NECESSARY PARTY. In a suit brought by a local government under this subchapter, the commission is a necessary and indispensable party.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.354. COSTS AND FEES. A penalty collected in a suit under this subchapter for a violation of Chapter 28 of this code or Chapter 401, Health and Safety Code, shall be paid to the state. If the suit is brought by a local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, the court shall include in any final judgment in favor of the local government or affected person an award to cover reasonable costs and attorney's fees.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.355. COMPLAINTS. In the case of a violation of Chapter 401, Health and Safety Code, a local government or person affected may file with the commission a written complaint and may request an investigation of an alleged violation by a person who holds a permit subject to the commission's jurisdiction.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.356. COMMISSION REPLY. The commission shall reply to the local government or person affected who filed a complaint under Section 7.355 in writing not later than the 60th day after the complaint is received and shall provide a copy of any investigation report relevant to the complaint together with a determination of whether the alleged violation was committed.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.358. OTHER REQUIREMENTS. In the case of a violation of Chapter 1903, Occupations Code, the regulatory authority of any local government may require compliance with any reasonable inspection requirements or ordinances or regulations designed to protect the public water supply and pay any reasonable fees imposed by the local government relating to work performed within its jurisdiction.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.846, eff. Sept. 1, 2003.

Sec. 7.359. FACTORS TO BE CONSIDERED IN DETERMINING AMOUNT OF CIVIL PENALTY. In determining the amount of a civil penalty to be assessed in a suit brought by a local government under this subchapter, the trier of fact shall consider the factors described by Section 7.053.

Added by Acts 2015, 84th Leg., R.S., Ch. 543 (H.B. 1794), Sec. 2, eff. September 1, 2015.

Sec. 7.360. LIMITATIONS. A suit for a civil penalty that is brought by a local government under this subchapter must be brought not later than the fifth anniversary of the earlier of the date the person who committed the violation:

(1) notifies the commission in writing of the violation; or

(2) receives a notice of enforcement from the commission with respect to the alleged violation.

Added by Acts 2015, 84th Leg., R.S., Ch. 543 (H.B. 1794), Sec. 2, eff. September 1, 2015.

CHAPTER 8. SOUTHWESTERN STATES WATER COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Southwestern States Water Commission.

(2) "Commissioner" means a member of the commission.

(3) "Board" means the Texas Water Development Board.

Added by Acts 1985, 69th Leg., ch. 39, Sec. 1, eff. Sept. 1, 1985. Renumbered from Sec. 6.001 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(54) eff. Sept. 1, 1987. Renumbered from Sec. 6.001 and amended by Acts 1987, 70th Leg., ch. 977, Sec. 2, eff. June 19, 1987. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 451 (H.B. 163), Sec. 2, eff. September 1, 2015.

SUBCHAPTER B. ORGANIZATIONAL AND ADMINISTRATIVE PROVISIONS

Sec. 8.011. CREATION OF COMMISSION. The Southwestern States Water Commission is created as an advisory commission to the governor and the legislature.

Added by Acts 1985, 69th Leg., ch. 39, Sec. 1, eff. Sept. 1, 1985. Renumbered from Sec. 6.011 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(54) eff. Sept. 1, 1987.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 451 (H.B. 163), Sec. 3, eff. September 1, 2015.

Sec. 8.013. COMMISSIONERS; APPOINTMENT. (a) The commission is composed of three commissioners as follows:

(1) the governor or the governor's designee;

(2) a member of the standing committee of the house of representatives that has jurisdiction over natural resources, appointed by the governor; and

(3) a member of the standing committee of the senate that has jurisdiction over water issues, appointed by the governor.

(b) The governor or the governor's designee shall act as the official representative of this state on the commission and shall exercise all powers and duties of this state as a member of the commission.

Added by Acts 1985, 69th Leg., ch. 39, Sec. 1, eff. Sept. 1, 1985. Renumbered from Sec. 6.013 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(54), eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 46.01, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 451 (H.B. 163), Sec. 4, eff. September 1, 2015.

Sec. 8.015. TERMS. (a) The two appointed commissioners serve staggered terms of four years, with the term of one appointed commissioner expiring on February 1 of each odd-numbered year.

(b) Each appointed commissioner serves until the commissioner's

successor is appointed.

(c) A vacancy in an appointed position on the commission shall be filled for the unexpired portion of the term in the same manner as the original appointment.

Added by Acts 1985, 69th Leg., ch. 39, Sec. 1, eff. Sept. 1, 1985. Renumbered from Sec. 6.015 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(54), eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 46.02, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 451 (H.B. 163), Sec. 5, eff. September 1, 2015.

Sec. 8.016. CHAIRMAN. The governor or the governor's designee shall serve as chairman of the commission.

Added by Acts 1985, 69th Leg., ch. 39, Sec. 1, eff. Sept. 1, 1985. Renumbered from Sec. 6.016 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(54), eff. Sept. 1, 1987.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 451 (H.B. 163), Sec. 6, eff. September 1, 2015.

Sec. 8.017. COMMISSION MEETINGS. (a) The commission shall meet at least quarterly on a day and at a place within the state selected by it.

(b) A meeting of the commission may be recessed at the discretion of the commission.

(c) The chairman or two commissioners may call a special meeting at any time by giving notice to the other commissioner or commissioners.

(d) The chairman shall preside at all meetings of the commission.

(e) A majority of the commissioners constitute a quorum to transact business of the commission.

Added by Acts 1985, 69th Leg., ch. 39, Sec. 1, eff. Sept. 1, 1985. Renumbered from Sec. 6.017 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(54), eff. Sept. 1, 1987.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 451 (H.B. 163), Sec. 7, eff. September 1, 2015.

Sec. 8.019. ADMINISTRATIVE SUPPORT. The board shall provide administrative support to the commission to assist the commission in carrying out this chapter.

Added by Acts 1985, 69th Leg., ch. 39, Sec. 1, eff. Sept. 1, 1985. Renumbered from Sec. 6.019 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(54), eff. Sept. 1, 1987. Renumbered from Sec. 6.019 and amended by Acts 1987, 70th Leg., ch. 977, Sec. 2, eff. June 19, 1987.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 451 (H.B. 163), Sec. 8, eff. September 1, 2015.

Sec. 8.020. SPECIAL REPRESENTATIVES. In cooperating with or carrying out discussions with a particular state under Section 8.051 of this code or in negotiating with a particular state under Section 8.056 of this code, the commission may appoint one or more persons who reside within an area of this state that is adjacent to the particular state with which this state is cooperating, having discussions, or negotiating, and who are knowledgeable with regard to the water concerns of the adjacent state, to join the commission in the cooperative activity, discussions, or negotiations and to advise the commission.

Added by Acts 1985, 69th Leg., ch. 39, Sec. 1, eff. Sept. 1, 1985. Renumbered from Sec. 6.020 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(54), eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(55), eff. Sept. 1, 1987.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8.051. INTERACTION WITH OTHER STATES. (a) In cooperation with representatives of neighboring states, the commission may discuss the water needs of the region.

(b) The commission may initiate and carry out discussions with representatives of neighboring states relating to the identification

and development of sources and methods of augmenting water supplies on a regional basis after existing water supplies are fully committed.

Added by Acts 1985, 69th Leg., ch. 39, Sec. 1, eff. Sept. 1, 1985.
Renumbered from Sec. 6.051 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(54), eff. Sept. 1, 1987.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 451 (H.B. 163), Sec. 9, eff. September 1, 2015.

Sec. 8.052. INTERACTION WITH MEXICO. The commission may confer with the government of Mexico concerning water needs and development of sources of water supply.

Added by Acts 1985, 69th Leg., ch. 39, Sec. 1, eff. Sept. 1, 1985.
Renumbered from Sec. 6.052 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(54), eff. Sept. 1, 1987.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 451 (H.B. 163), Sec. 10, eff. September 1, 2015.

Sec. 8.054. DESIGNATING WATER DEFICIENT AREAS. The commission shall designate areas of the state in which the present and future water supply is not sufficient to meet the future requirements of those areas, even after giving full consideration to the effects of water conservation in the projections of future needs.

Added by Acts 1985, 69th Leg., ch. 39, Sec. 1, eff. Sept. 1, 1985.
Renumbered from Sec. 6.054 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(54), eff. Sept. 1, 1987.

Sec. 8.055. REPORTS. The commission shall make recommendations to the governor and to the legislature relating to potential water source areas and the necessary methods to bring the water to those areas in this state that need water.

Added by Acts 1985, 69th Leg., ch. 39, Sec. 1, eff. Sept. 1, 1985.

Renumbered from Sec. 6.055 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(54), eff. Sept. 1, 1987.

Sec. 8.056. COMPACTS. The commission may contact and negotiate with other states regarding the need for establishing interstate compacts, addressing groundwater problems, needs, and supplies, if an aquifer underlies several states, and addressing other related subjects that would be beneficial to the states including the conservation and beneficial use of water.

Added by Acts 1985, 69th Leg., ch. 39, Sec. 1, eff. Sept. 1, 1985.
Renumbered from Sec. 6.056 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(54), eff. Sept. 1, 1987.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 451 (H.B. 163), Sec. 11, eff. September 1, 2015.

CHAPTER 10. WATER CONSERVATION ADVISORY COUNCIL

Sec. 10.001. DEFINITIONS. In this chapter:

(1) "Best management practices" has the meaning assigned by Section 11.002.

(2) "Board" means the Texas Water Development Board.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) "Council" means the Water Conservation Advisory Council.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 3, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.03, eff. September 1, 2007.

Sec. 10.002. PURPOSE. The council is created to provide the governor, lieutenant governor, speaker of the house of representatives, legislature, board, commission, political subdivisions, and public with the resource of a select council with expertise in water conservation.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 3, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.03, eff. September 1, 2007.

Sec. 10.003. CREATION AND MEMBERSHIP. (a) The council is composed of 23 members appointed by the board. The board shall appoint one member to represent each of the following entities or interest groups:

(1) Texas Commission on Environmental Quality;
(2) Department of Agriculture;
(3) Parks and Wildlife Department;
(4) State Soil and Water Conservation Board;
(5) Texas Water Development Board;
(6) regional water planning groups;
(7) federal agencies;
(8) municipalities;
(9) groundwater conservation districts;
(10) river authorities;
(11) environmental groups;
(12) irrigation districts;
(13) institutional water users;
(14) professional organizations focused on water conservation;
(15) higher education;
(16) agricultural groups;
(17) refining and chemical manufacturing;
(18) electric generation;
(19) mining and recovery of minerals;
(20) landscape irrigation and horticulture;
(21) water control and improvement districts;
(22) rural water users; and
(23) municipal utility districts.

(b) Each entity or interest group described by Subsection (a) may recommend one or more persons to fill the position on the council held by the member who represents that entity or interest group. If one or more persons are recommended for a position on the council, the board shall appoint one of the persons recommended to fill the position.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 3, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.03, eff. September 1, 2007.

Sec. 10.004. TERMS. (a) Members of the council serve staggered terms of six years, with seven or eight members' terms, as applicable, expiring August 31 of each odd-numbered year.

(b) The board shall fill a vacancy on the council for the unexpired term by appointing a person who has the same qualifications as required under Section 10.003 for the person who previously held the vacated position.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 3, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.03, eff. September 1, 2007.

Sec. 10.005. PRESIDING OFFICER. The council members shall select one member as the presiding officer of the council to serve in that capacity until the person's term as a council member expires.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 3, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.03, eff. September 1, 2007.

Sec. 10.006. COUNCIL STAFF. On request by the council, the board shall provide any necessary staff to assist the council in the performance of its duties.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 3, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.03, eff. September 1, 2007.

Sec. 10.007. PUBLIC MEETINGS AND PUBLIC INFORMATION. (a) The

council may hold public meetings as needed to fulfill its duties under this chapter.

(b) The council is subject to Chapters 551 and 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 3, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.03, eff. September 1, 2007.

Sec. 10.008. INAPPLICABILITY OF ADVISORY COMMITTEE LAW. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the council.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 3, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.03, eff. September 1, 2007.

Sec. 10.009. COMPENSATION OF MEMBERS. (a) Members of the council serve without compensation but may be reimbursed by legislative appropriation for actual and necessary expenses related to the performance of council duties.

(b) Reimbursement under Subsection (a) is subject to the approval of the presiding officer of the council.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 3, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.03, eff. September 1, 2007.

Sec. 10.010. POWERS AND DUTIES OF COUNCIL. The council shall:

(1) monitor trends in water conservation implementation;

(2) monitor new technologies for possible inclusion by the board as best management practices in the best management practices guide developed by the water conservation implementation task force under Chapter 109, Acts of the 78th Legislature, Regular Session, 2003;

(3) monitor the effectiveness of the statewide water conservation public awareness program developed under Section 16.401 and associated local involvement in implementation of the program;

(4) develop and implement a state water management resource library;

(5) develop and implement a public recognition program for water conservation;

(6) monitor the implementation of water conservation strategies by water users included in regional water plans; and

(7) monitor target and goal guidelines for water conservation to be considered by the board and commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 3, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.03, eff. September 1, 2007.

Sec. 10.011. REPORT. Not later than December 1 of each even-numbered year, the council shall submit to the governor, lieutenant governor, and speaker of the house of representatives:

(1) a report on progress made in water conservation in this state; and

(2) recommendations for legislation to advance water conservation in this state, which may include conservation through the reduction of the amount of water lost because of evaporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 3, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.03, eff. September 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1151 (S.B. 551), Sec. 1, eff. September 1, 2015.

SUBTITLE B. WATER RIGHTS

CHAPTER 11. WATER RIGHTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. VESTED RIGHTS NOT AFFECTED. (a) Nothing in this code affects vested private rights to the use of water, except to the

extent that provisions of Subchapter G of this chapter might affect these rights.

(b) This code does not recognize any riparian right in the owner of any land the title to which passed out of the State of Texas after July 1, 1895.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.002. DEFINITIONS. In this chapter and in Chapter 12 of this code:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Board" means the Texas Water Development Board.

(3) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(4) "Beneficial use" means use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose and shall include conserved water.

(5) "Water right" means a right acquired under the laws of this state to impound, divert, or use state water.

(6) "Appropriator" means a person who has made beneficial use of any water in a lawful manner under the provisions of any act of the legislature before the enactment of Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended, and who has filed with the State Board of Water Engineers a record of his appropriation as required by the 1913 Act, as amended, or a person who makes or has made beneficial use of any water within the limitations of a permit lawfully issued by the commission or one of its predecessors.

(7) Renumbered as subd. (6) by Acts 1985, 69th Leg., ch. 795, Sec. 1.003, eff. Sept. 1, 1985.

(8) "Conservation" means:

(A) the development of water resources; and

(B) those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(9) "Conserved water" means that amount of water saved by a holder of an existing permit, certified filing, or certificate of adjudication through practices, techniques, and technologies that would otherwise be irretrievably lost to all consumptive beneficial uses arising from storage, transportation, distribution, or application.

(10) "Surplus water" means water in excess of the initial or continued beneficial use of the appropriator.

(11) "River basin" means a river or coastal basin designated by the board as a river basin under Section 16.051. The term does not include waters originating in the bays or arms of the Gulf of Mexico.

(12) "Agriculture" means any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) raising or keeping equine animals;

(E) wildlife management;

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure; and

(G) aquaculture, as defined by Section 134.001, Agriculture Code.

(13) "Agricultural use" means any use or activity involving agriculture, including irrigation.

(14) "Nursery grower" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(15) "Environmental flow analysis" means the application of

a scientifically derived process for predicting the response of an ecosystem to changes in instream flows or freshwater inflows.

(16) "Environmental flow regime" means a schedule of flow quantities that reflects seasonal and yearly fluctuations that typically would vary geographically, by specific location in a watershed, and that are shown to be adequate to support a sound ecological environment and to maintain the productivity, extent, and persistence of key aquatic habitats in and along the affected water bodies.

(17) "Environmental flow standards" means those requirements adopted by the commission under Section 11.1471.

(18) "Advisory group" means the environmental flows advisory group.

(19) "Science advisory committee" means the Texas environmental flows science advisory committee.

(20) "Best management practices" means those voluntary efficiency measures developed by the commission and the board that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specified time frame.

(21) "Utility commission" means the Public Utility Commission of Texas.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 1.01; Acts 1985, 69th Leg., ch. 795, Sec. 1.003, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.057, eff. Aug. 12, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 2.02, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1234, Sec. 11, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.04, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 4, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.04, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.04, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 24.001, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 5.01, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.05, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 5, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 1, eff. September 1, 2017.

Sec. 11.003. STREAMS THAT FORM BOUNDARIES INCLUDED. This chapter applies to all streams or other sources of water supply lying upon or forming a part of the boundaries of this state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.004. COMMISSION TO RECEIVE CERTIFIED COPIES OF JUDGMENTS, ETC. When any court of record renders a judgment, decree, or order affecting the title to any water right, claim, appropriation, or irrigation facility or affecting any matter over which the commission is given supervision by law, the clerk of the court shall immediately transmit to the commission a certified copy of the judgment, decree, or order.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.003, eff. Sept. 1, 1985.

Sec. 11.005. APPLICABILITY TO WORKS UNDER FEDERAL RECLAMATION ACT. This chapter applies to the construction, maintenance, and operation of irrigation works constructed in this state under the federal reclamation act, as amended (43 U.S.C. Sec. 371 et seq.), to the extent that this chapter is not inconsistent with the federal act or the regulations made under that act by the secretary of the interior.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. RIGHTS IN STATE WATER

Sec. 11.021. STATE WATER. (a) The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state is the property of the state.

(b) Water imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state is the property of the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.022. ACQUISITION OF RIGHT TO USE STATE WATER. The right to the use of state water may be acquired by appropriation in the manner and for the purposes provided in this chapter. When the right to use state water is lawfully acquired, it may be taken or diverted from its natural channel.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.023. PURPOSES FOR WHICH WATER MAY BE APPROPRIATED. (a) To the extent that state water has not been set aside by the commission under Section 11.1471(a)(2) to meet downstream instream flow needs or freshwater inflow needs, state water may be appropriated, stored, or diverted for:

(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

(2) agricultural uses and industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

(3) mining and recovery of minerals;

(4) hydroelectric power;

(5) navigation;

(6) recreation and pleasure;

(7) public parks;

(8) game preserves; and

(9) recharge into an aquifer underlying this state other than an aquifer described under Subsection (c) through surface infiltration or an aquifer recharge project as defined by Section 27.201.

(b) State water also may be appropriated, stored, or diverted for any other beneficial use.

(c) Unappropriated storm water and floodwater may be appropriated to recharge underground freshwater bearing sands and aquifers in the portion of the Edwards underground reservoir located within Kinney, Uvalde, Medina, Bexar, Comal, and Hays counties if it can be established by expert testimony that an unreasonable loss of state water will not occur and that the water can be withdrawn at a later time for application to a beneficial use. The normal or ordinary flow of a stream or watercourse may never be appropriated, diverted, or used by a permittee for this recharge purpose.

(d) When it is put or allowed to sink into the ground, water appropriated under Subsections (a)(9) and (c) loses its character and classification as state water, storm water, or floodwater and is considered percolating groundwater.

(e) The amount of water appropriated for each purpose mentioned in this section shall be specifically appropriated for that purpose, subject to the preferences prescribed in Section 11.024 of this code. The commission may authorize appropriation of a single amount or volume of water for more than one purpose of use. In the event that a single amount or volume of water is appropriated for more than one purpose of use, the total amount of water actually diverted for all of the authorized purposes may not exceed the total amount of water appropriated.

(f) The water of any arm, inlet, or bay of the Gulf of Mexico may be changed from salt water to sweet or fresh water and held or stored by dams, dikes, or other structures and may be taken or diverted for any purpose authorized by this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1010, Sec. 2.03, eff. Sept. 1,

1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.02, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.05, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.05, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 742 (H.B. 720), Sec. 1, eff. June 10, 2019.

Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE. (a) The waters of the state are held in trust for the public, and the right to use state water may be appropriated only as expressly authorized by law.

(b) Maintaining the biological soundness of the state's rivers, lakes, bays, and estuaries is of great importance to the public's economic health and general well-being. The legislature encourages voluntary water and land stewardship to benefit the water in the state, as defined by Section 26.001.

(c) The legislature has expressly required the commission while balancing all other public interests to consider and, to the extent practicable, provide for the freshwater inflows and instream flows necessary to maintain the viability of the state's streams, rivers, and bay and estuary systems in the commission's regular granting of permits for the use of state waters. As an essential part of the state's environmental flows policy, all permit conditions relating to freshwater inflows to affected bays and estuaries and instream flow needs must be subject to temporary suspension if necessary for water to be applied to essential beneficial uses during emergencies.

(d) The legislature has not expressly authorized granting water rights exclusively for:

(1) instream flows dedicated to environmental needs or inflows to the state's bay and estuary systems; or

(2) other similar beneficial uses.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.06

(d-1) The legislature has determined that existing water rights that are converted to water rights for environmental purposes should be enforced in a manner consistent with the enforcement of water rights for other purposes as provided by the laws of this state

governing the appropriation of state water.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.06

(d-1) The legislature has determined that existing water rights that are amended to authorize use for environmental purposes should be enforced in a manner consistent with the enforcement of water rights for other purposes as provided by the laws of this state governing the appropriation of state water.

(d-2) The legislature finds that to provide certainty in water management and development and to provide adequate protection of the state's streams, rivers, and bays and estuaries, the state must have a process with specific timelines for prompt action to address environmental flow issues in the state's major basin and bay systems, especially those systems in which unappropriated water is still available.

(d-3) The legislature finds that:

(1) in those basins in which water is available for appropriation, the commission should establish an environmental set-aside below which water should not be available for appropriation; and

(2) in those basins in which the unappropriated water that will be set aside for instream flow and freshwater inflow protection is not sufficient to fully satisfy the environmental flow standards established by the commission, a variety of market approaches, both public and private, for filling the gap must be explored and pursued.

(d-4) The legislature finds that while the state has pioneered tools to address freshwater inflow needs for bays and estuaries, there are limitations to those tools in light of both scientific and public policy evolution. To fully address bay and estuary environmental flow issues, the foundation of work accomplished by the state should be improved. While the state's instream flow studies program appears to encompass a comprehensive and scientific approach for establishing a process to assess instream flow needs for rivers and streams across the state, more extensive review and examination of the details of the program, which may not be fully developed until the program is under way, are needed to ensure an effective tool for evaluating riverine environmental flow conditions.

(d-5) The legislature finds that the management of water to meet instream flow and freshwater inflow needs should be evaluated on a regular basis and adapted to reflect both improvements in science

related to environmental flows and future changes in projected human needs for water. In addition, the development of management strategies for addressing environmental flow needs should be an ongoing, adaptive process that considers and addresses local issues.

(d-6) The legislature finds that recommendations for state action to protect instream flows and freshwater inflows should be developed through a consensus-based, regional approach involving balanced representation of stakeholders and that such a process should be encouraged throughout the state.

(e) The fact that greater pressures and demands are being placed on the water resources of the state makes it of paramount importance to ensure that these important priorities are effectively addressed by detailing how environmental flow standards are to be developed using the environmental studies that have been and are to be performed by the state and others and specifying in clear delegations of authority how those environmental flow standards will be integrated into the regional water planning and water permitting process.

(f) The legislature recognizes that effective implementation of the approach provided by this chapter for protecting instream flows and freshwater inflows will require more effective water rights administration and enforcement systems than are currently available in most areas of the state.

Added by Acts 2003, 78th Leg., ch. 1242, Sec. 2, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.06, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 5, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.06, eff. September 1, 2007.

Sec. 11.0236. ENVIRONMENTAL FLOWS ADVISORY GROUP. (a) In recognition of the importance that the ecological soundness of our riverine, bay, and estuary systems and riparian lands has on the economy, health, and well-being of the state there is created the environmental flows advisory group.

(b) The advisory group is composed of nine members as follows:

(1) three members appointed by the governor;

(2) three members of the senate appointed by the lieutenant governor; and

(3) three members of the house of representatives appointed by the speaker of the house of representatives.

(c) Of the members appointed under Subsection (b)(1):

(1) one member must be a member of the commission;

(2) one member must be a member of the board; and

(3) one member must be a member of the Parks and Wildlife Commission.

(d) Each member of the advisory group serves at the will of the person who appointed the member.

(e) The appointed senator with the most seniority and the appointed house member with the most seniority serve together as co-presiding officers of the advisory group.

(f) A member of the advisory group is not entitled to receive compensation for service on the advisory group but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the advisory group, as provided by the General Appropriations Act.

(g) The advisory group may accept gifts and grants from any source to be used to carry out a function of the advisory group.

(h) The commission shall provide staff support for the advisory group.

(i) The advisory group shall conduct public hearings and study public policy implications for balancing the demands on the water resources of the state resulting from a growing population with the requirements of the riverine, bay, and estuary systems including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any other issues that the advisory group determines have importance and relevance to the protection of environmental flows. In evaluating the options for providing adequate environmental flows, the advisory group shall take notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our public and private lands, streams and rivers, and bay and estuary systems and are high priorities in the water management process. The advisory group shall specifically address:

(1) ways that the ecological soundness of those systems

will be ensured in the water rights administration and enforcement and water allocation processes; and

(2) appropriate methods to encourage persons voluntarily to convert reasonable amounts of existing water rights to use for environmental flow protection temporarily or permanently.

(j) The advisory group may adopt rules, procedures, and policies as needed to administer this section, to implement its responsibilities, and to exercise its authority under Sections 11.02361 and 11.02362.

(k) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory group.

(l) Not later than December 1, 2008, and every two years thereafter, the advisory group shall issue and promptly deliver to the governor, lieutenant governor, and speaker of the house of representatives copies of a report summarizing:

(1) any hearings conducted by the advisory group;

(2) any studies conducted by the advisory group;

(3) any legislation proposed by the advisory group;

(4) progress made in implementing Sections 11.02361 and 11.02362; and

(5) any other findings and recommendations of the advisory group.

(m) The advisory group is abolished on the date that the commission has adopted environmental flow standards under Section 11.1471 for all of the river basin and bay systems in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.07, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.07, eff. September 1, 2007.

Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY COMMITTEE. (a) The Texas environmental flows science advisory committee consists of at least five but not more than nine members appointed by the advisory group.

(b) The advisory group shall appoint to the science advisory committee persons who will provide an objective perspective and diverse technical expertise, including expertise in hydrology, hydraulics, water resources, aquatic and terrestrial biology,

geomorphology, geology, water quality, computer modeling, and other technical areas pertinent to the evaluation of environmental flows.

(c) Members of the science advisory committee serve five-year terms expiring March 1. A vacancy on the science advisory committee is filled by appointment by the co-presiding officers of the advisory group for the unexpired term.

(d) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the science advisory committee.

(e) The science advisory committee shall:

(1) serve as an objective scientific body to advise and make recommendations to the advisory group on issues relating to the science of environmental flow protection; and

(2) develop recommendations to help provide overall direction, coordination, and consistency relating to:

(A) environmental flow methodologies for bay and estuary studies and instream flow studies;

(B) environmental flow programs at the commission, the Parks and Wildlife Department, and the board; and

(C) the work of the basin and bay expert science teams described in Section 11.02362.

(f) To assist the advisory group to assess the extent to which the recommendations of the science advisory committee are considered and implemented, the commission, the Parks and Wildlife Department, and the board shall provide written reports to the advisory group, at intervals determined by the advisory group, that describe:

(1) the actions taken by each agency in response to each recommendation; and

(2) for each recommendation not implemented, the reason it was not implemented.

(g) The science advisory committee is abolished on the date the advisory group is abolished under Section 11.0236(m).

Added by Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.07, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.07, eff. September 1, 2007.

Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME RECOMMENDATIONS. (a) For the purposes of this section, the advisory

group, not later than November 1, 2007, shall define the geographical extent of each river basin and bay system in this state for the sole purpose of developing environmental flow regime recommendations under this section and adoption of environmental flow standards under Section 11.1471.

(b) The advisory group shall give priority in descending order to the following river basin and bay systems of the state for the purpose of developing environmental flow regime recommendations and adopting environmental flow standards:

(1) the river basin and bay system consisting of the Trinity and San Jacinto Rivers and Galveston Bay and the river basin and bay system consisting of the Sabine and Neches Rivers and Sabine Lake Bay;

(2) the river basin and bay system consisting of the Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the river basin and bay system consisting of the Guadalupe, San Antonio, Mission, and Aransas Rivers and Mission, Copano, Aransas, and San Antonio Bays; and

(3) the river basin and bay system consisting of the Nueces River and Corpus Christi and Baffin Bays, the river basin and bay system consisting of the Rio Grande, the Rio Grande estuary, and the Lower Laguna Madre, and the Brazos River and its associated bay and estuary system.

(c) For the river basin and bay systems listed in Subsection (b)(1):

(1) the advisory group shall appoint the basin and bay area stakeholders committee not later than November 1, 2007;

(2) the basin and bay area stakeholders committee shall establish a basin and bay expert science team not later than March 1, 2008;

(3) the basin and bay expert science team shall finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, the advisory group, and the commission not later than March 1, 2009, except that at the request of the basin and bay area stakeholders committee for good cause shown, the advisory group may extend the deadline provided by this subdivision;

(4) the basin and bay area stakeholders committee shall submit to the commission its comments on and recommendations regarding the basin and bay expert science team's recommended

environmental flow regime not later than September 1, 2009; and

(5) the commission shall adopt the environmental flow standards as provided by Section 11.1471 not later than September 1, 2010.

(d) The advisory group shall appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(2) not later than September 1, 2008, and shall appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(3) not later than September 1, 2009. The advisory group shall establish a schedule for the performance of the tasks listed in Subsections (c)(2) through (5) with regard to the river basin and bay systems listed in Subsections (b)(2) and (3) that will result in the adoption of environmental flow standards for that river basin and bay system by the commission as soon as is reasonably possible. Each basin and bay area stakeholders committee and basin and bay expert science team for a river basin and bay system listed in Subsection (b)(2) or (3) shall make recommendations to the advisory group with regard to the schedule applicable to that river basin and bay system. The advisory group shall consider the recommendations of the basin and bay area stakeholders committee and basin and bay expert science team as well as coordinate with, and give appropriate consideration to the recommendations of, the commission, the Parks and Wildlife Department, and the board in establishing the schedule.

(e) For a river basin and bay system or a river basin that does not have an associated bay system in this state not listed in Subsection (b), the advisory group shall establish a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards. The advisory group shall develop the schedule in consultation with the commission, the Parks and Wildlife Department, the board, and the pertinent basin and bay area stakeholders committee and basin and bay expert science team. The advisory group may, on its own initiative or on request, modify a schedule established under this subsection to be more responsive to particular circumstances, local desires, changing conditions, or time-sensitive conflicts. This subsection does not prohibit, in a river basin and bay system for which the advisory group has not yet established a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards, an effort to develop information on environmental flow

needs and ways in which those needs can be met by a voluntary consensus-building process.

(f) The advisory group shall appoint a basin and bay area stakeholders committee for each river basin and bay system in this state for which a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards is specified by or established under Subsection (c), (d), or (e). Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay area stakeholders committee. Each committee must consist of at least 17 members. The membership of each committee must:

(1) reflect a fair and equitable balance of interest groups concerned with the particular river basin and bay system for which the committee is established; and

(2) be representative of appropriate stakeholders, including the following if they have a presence in the particular river basin and bay system for which the committee is established:

(A) agricultural water users, including representatives of each of the following sectors:

(i) agricultural irrigation;

(ii) free-range livestock; and

(iii) concentrated animal feeding operation;

(B) recreational water users, including coastal recreational anglers and businesses supporting water recreation;

(C) municipalities;

(D) soil and water conservation districts;

(E) industrial water users, including representatives of each of the following sectors:

(i) refining;

(ii) chemical manufacturing;

(iii) electricity generation; and

(iv) production of paper products or timber;

(F) commercial fishermen;

(G) public interest groups;

(H) regional water planning groups;

(I) groundwater conservation districts;

(J) river authorities and other conservation and reclamation districts with jurisdiction over surface water; and

(K) environmental interests.

(g) Members of a basin and bay area stakeholders committee

serve five-year terms expiring March 1. If a vacancy occurs on a committee, the remaining members of the committee by majority vote shall appoint a member to serve the remainder of the unexpired term.

(h) Meetings of a basin and bay area stakeholders committee must be open to the public.

(i) Each basin and bay area stakeholders committee shall establish a basin and bay expert science team for the river basin and bay system for which the committee is established. The basin and bay expert science team must be established not later than six months after the date the basin and bay area stakeholders committee is established. Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay expert science team. Each basin and bay expert science team must be composed of technical experts with special expertise regarding the river basin and bay system or regarding the development of environmental flow regimes. A person may serve as a member of more than one basin and bay expert science team at the same time.

(j) The members of a basin and bay expert science team serve five-year terms expiring April 1. A vacancy on a basin and bay expert science team is filled by appointment by the pertinent basin and bay area stakeholders committee to serve the remainder of the unexpired term.

(k) The science advisory committee shall appoint one of its members to serve as a liaison to each basin and bay expert science team to facilitate coordination and consistency in environmental flow activities throughout the state. The commission, the Parks and Wildlife Department, and the board shall provide technical assistance to each basin and bay expert science team, including information about the studies conducted under Sections 16.058 and 16.059, and may serve as nonvoting members of the basin and bay expert science team to facilitate the development of environmental flow regime recommendations.

(l) Where reasonably practicable, meetings of a basin and bay expert science team must be open to the public.

(m) Each basin and bay expert science team shall develop environmental flow analyses and a recommended environmental flow regime for the river basin and bay system for which the team is established through a collaborative process designed to achieve a consensus. In developing the analyses and recommendations, the science team must consider all reasonably available science, without

regard to the need for the water for other uses, and the science team's recommendations must be based solely on the best science available. For the Rio Grande below Fort Quitman, any uses attributable to Mexican water flows must be excluded from environmental flow regime recommendations.

(n) Each basin and bay expert science team shall submit its environmental flow analyses and environmental flow regime recommendations to the pertinent basin and bay area stakeholders committee, the advisory group, and the commission in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). The basin and bay area stakeholders committee and the advisory group may not change the environmental flow analyses or environmental flow regime recommendations of the basin and bay expert science team.

(o) Each basin and bay area stakeholders committee shall review the environmental flow analyses and environmental flow regime recommendations submitted by the committee's basin and bay expert science team and shall consider them in conjunction with other factors, including the present and future needs for water for other uses related to water supply planning in the pertinent river basin and bay system. For the Rio Grande, the basin and bay area stakeholders committee shall also consider the water accounting requirements for any international water sharing treaty, minutes, and agreement applicable to the Rio Grande and the effects on allocation of water by the Rio Grande watermaster in the middle and lower Rio Grande. The Rio Grande basin and bay expert science team may not recommend any environmental flow regime that would result in a violation of a treaty or court decision. The basin and bay area stakeholders committee shall develop recommendations regarding environmental flow standards and strategies to meet the environmental flow standards and submit those recommendations to the commission and to the advisory group in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). In developing its recommendations, the basin and bay area stakeholders committee shall operate on a consensus basis to the maximum extent possible.

(p) In recognition of the importance of adaptive management, after submitting its recommendations regarding environmental flow standards and strategies to meet the environmental flow standards to the commission, each basin and bay area stakeholders committee, with

the assistance of the pertinent basin and bay expert science team, shall prepare and submit for approval by the advisory group a work plan. The work plan must:

(1) establish a periodic review of the basin and bay environmental flow analyses and environmental flow regime recommendations, environmental flow standards, and strategies, to occur at least once every 10 years;

(2) prescribe specific monitoring, studies, and activities; and

(3) establish a schedule for continuing the validation or refinement of the basin and bay environmental flow analyses and environmental flow regime recommendations, the environmental flow standards adopted by the commission, and the strategies to achieve those standards.

(q) In accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e), the advisory group, with input from the science advisory committee, shall review the environmental flow analyses and environmental flow regime recommendations submitted by each basin and bay expert science team. If appropriate, the advisory group shall submit comments on the analyses and recommendations to the commission for use by the commission in adopting rules under Section 11.1471. Comments must be submitted not later than six months after the date of receipt of the analyses and recommendations.

(r) Notwithstanding the other provisions of this section, in the event the commission, by permit or order, has established an estuary advisory council with specific duties related to implementation of permit conditions for environmental flows, that council may continue in full force and effect and shall act as and perform the duties of the basin and bay area stakeholders committee under this section. The estuary advisory council shall add members from stakeholder groups and from appropriate science and technical groups, if necessary, to fully meet the criteria for membership established in Subsection (f) and shall operate under the provisions of this section.

(s) Each basin and bay area stakeholders committee and basin and bay expert science team is abolished on the date the advisory group is abolished under Section 11.0236(m).

Added by Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.07,

eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.07, eff. September 1, 2007.

Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The commission may not issue a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. The commission may approve an application to amend an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

(b) This section does not alter the commission's obligations under Section 11.042(a-1), (b), or (c), 11.046(b), 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491, 11.150, 11.152, 16.058, 16.059, or 18.004.

Added by Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.07, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.07, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1016 (H.B. 4231), Sec. 1, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 5, eff. June 17, 2015.

Sec. 11.024. APPROPRIATION: PREFERENCES. In order to conserve and properly utilize state water, the public welfare requires not only recognition of beneficial uses but also a constructive public policy regarding the preferences between these uses, and it is therefore declared to be the public policy of this state that in appropriating state water preference shall be given to the following uses in the order named:

(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals, it being the public policy of the state and for the benefit of the greatest number of people that in the appropriation of water as herein defined, the appropriation of water for domestic and municipal uses shall be and

remain superior to the rights of the state to appropriate the same for all other purposes;

(2) agricultural uses and industrial uses, which means processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

(3) mining and recovery of minerals;

(4) hydroelectric power;

(5) navigation;

(6) recreation and pleasure; and

(7) other beneficial uses.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 5460, ch. 1026, Sec. 1, eff. Aug. 29, 1983; Acts 2001, 77th Leg., ch. 966, Sec. 2.03, eff. Sept. 1, 2001.

Sec. 11.025. SCOPE OF APPROPRIATIVE RIGHT. A right to use state water under a permit or a certified filing is limited not only to the amount specifically appropriated but also to the amount which is being or can be beneficially used for the purposes specified in the appropriation, and all water not so used is considered not appropriated.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.026. PERFECTION OF AN APPROPRIATION. No right to appropriate water is perfected unless the water has been beneficially used for a purpose stated in the original declaration of intention to appropriate water or stated in a permit issued by the commission or one of its predecessors.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.027. RIGHTS BETWEEN APPROPRIATORS. As between appropriators, the first in time is the first in right.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.0275. FAIR MARKET VALUE. Whenever the law requires the payment of fair market value for a water right, fair market value shall be determined by the amount of money that a willing buyer would pay a willing seller, neither of which is under any compulsion to buy or sell, for the water in an arms-length transaction and shall not be limited to the amount of money that the owner of the water right has paid or is paying for the water.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 2.04, eff. Sept. 1, 1997.

Sec. 11.029. TITLE TO APPROPRIATION BY LIMITATION. When an appropriator from a source of water supply has used water under the terms of a certified filing or a permit for a period of three years, he acquires title to his appropriation by limitation against any other claimant of water from the same source of water supply and against any riparian owner on the same source of water supply.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.030. FORFEITURE OF APPROPRIATION. If any lawful appropriation or use of state water is wilfully abandoned during any three successive years, the right to use the water is forfeited and the water is again subject to appropriation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.031. ANNUAL REPORT. (a) Not later than March 1 of each year, each person who has a water right issued by the commission or who impounded, diverted, or otherwise used state water during the preceding calendar year shall submit a written report to the commission on a form prescribed by the commission. The report shall

contain all information required by the commission to aid in administering the water law and in making inventory of the state's water resources. However, with the exception of those persons who hold water rights, no report is required of persons who take water solely for domestic or livestock purposes.

(b) A person who fails to file an annual report with the commission as required by Subsection (a) or fails to timely comply with a request by the commission to make information available under Subsection (d) is liable for a penalty for each day the person fails to file the statement or comply with the request after the applicable deadline in an amount not to exceed:

(1) $100 per day if the person is the holder of a water right authorizing the appropriation of 5,000 acre-feet or less per year; or

(2) $500 per day if the person is the holder of a water right authorizing the appropriation of more than 5,000 acre-feet per year.

(b-1) The state may sue to recover a penalty under Subsection (b).

(c) The commission may waive the requirements of Subsection (a) of this section for a person who has a water right or uses state water in an area of the state where watermaster operations are established.

(d) Each person who has a water right issued by the commission or who impounds, diverts, or otherwise uses state water shall maintain water use information required under Subsection (a) on a monthly basis during the months a water rights holder uses permitted water. The person shall make the information available to the commission on the commission's request. The executive director shall establish a reasonable deadline by which a person must make available information requested by the commission under this subsection.

(e) Except as provided by Subsection (a), the commission may request information maintained under Subsection (d) only during a drought or other emergency shortage of water or in response to a complaint.

(f) Subsection (e) does not affect the authority of a watermaster to obtain water use information under other law.

(g) The commission shall establish a process by which a report required under Subsection (a) may be submitted electronically through the Internet.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.003, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 427, Sec. 1, 2, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 5.02, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1020 (H.B. 2615), Sec. 1, eff. September 1, 2013.

Sec. 11.032. RECORDS. (a) A person who owns and operates a system of waterworks used for a purpose authorized by this code shall keep a detailed record of daily operations so that the quantity of water taken or diverted each calendar year can be determined.

(b) If the water is used for irrigation, the record must show the number of acres irrigated, the character of the crops grown, and the yield per acre. No survey is required to determine the exact number of acres irrigated.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.033. EMINENT DOMAIN. The right to take water necessary for domestic and municipal supply purposes is primary and fundamental, and the right to recover from other uses water which is essential to domestic and municipal supply purposes is paramount and unquestioned in the policy of the state. All political subdivisions of the state and constitutional governmental agencies exercising delegated legislative powers have the power of eminent domain to be exercised as provided by law for domestic, municipal, and manufacturing uses and for other purposes authorized by this code, including the irrigation of land for all requirements of agricultural employment.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.034. RESERVOIR SITE: LAND AND RIGHTS-OF-WAY. An appropriator who is authorized to construct a dam or reservoir is

granted the right-of-way, not to exceed 100 feet wide, and the necessary area for the site, over any public school land, university land, or asylum land of this state and the use of the rock, gravel, and timber on the site and right-of-way for construction purposes, after paying compensation as determined by the commission. An appropriator may acquire the reservoir site and rights-of-way over private land by contract.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.035. CONDEMNATION OF PRIVATE PROPERTY. (a) An appropriator may obtain rights-of-way over private land and may obtain the land necessary for pumping plants, intakes, headgates, and storage reservoirs by condemnation.

(b) The party obtaining private property by condemnation shall cause damages to be assessed and paid for as provided by the statutes of this state relating to eminent domain.

(c) If the party exercising the power granted by this section is not a corporation, district, city, or town, he shall apply to the commission for the condemnation.

(d) The executive director shall have the proposed condemnation investigated. After the investigation, the commission may give notice to the party owning the land proposed to be condemned and hold a hearing on the proposed condemnation.

(e) If after a hearing the commission determines that the condemnation is necessary, the executive director may institute condemnation proceedings in the name of the State of Texas for the use and benefit of the party who applied for the condemnation and all others similarly situated.

(f) The parties at whose instance a condemnation suit is instituted shall pay the costs of the suit and condemnation in proportion to the benefits received by each party as fixed by the commission. Before using any of the condemned rights or property, a party receiving the rights or property shall pay the amount of costs fixed by the commission.

(g) If, after the costs of the condemnation proceedings have been paid, a party seeks to take the benefits of the condemnation proceedings, he shall apply to the commission for the benefits. The

commission may grant the application and fix the fees and charges to be paid by the applicant.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.004, eff. Sept. 1, 1985.

Sec. 11.036. CONSERVED OR STORED WATER: SUPPLY CONTRACT. (a) A person, association of persons, corporation, or water improvement or irrigation district having in possession and control any storm water, floodwater, or rainwater that is conserved or stored as authorized by this chapter may contract to supply the water to any person, association of persons, corporation, or water improvement or irrigation district having the right to acquire use of the water.

(b) The price and terms of the contract shall be just and reasonable and without discrimination, and the contract is subject to the same revision and control as provided in this code for other water rates and charges. If the contract sets forth explicit expiration provisions, no continuation of the service obligation will be implied.

(c) The terms of a contract may expressly provide that the person using the stored or conserved water is required to develop alternative or replacement supplies prior to the expiration of the contract and may further provide for enforcement of such terms by court order.

(d) If any person uses the stored or conserved water without first entering into a contract with the party that conserved or stored it, the user shall pay for the use at a rate determined by the commission to be just and reasonable, subject to court review as in other cases.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1010, Sec. 2.05, eff. Sept. 1, 1997.

Sec. 11.037. WATER SUPPLIERS: RULES AND REGULATIONS. (a) Every person, association of persons, corporation, or irrigation district conserving or supplying water for any of the purposes authorized by this chapter shall make and publish reasonable rules

and regulations relating to:

(1) the method of supply;

(2) the use and distribution of the water; and

(3) the procedure for applying for the water and for paying for it.

(b) Each person, association of persons, corporation, and district authorized by law to carry out irrigation powers that is conserving or supplying water for any of the purposes authorized by this chapter may make and publish reasonable rules relating to water conservation, as defined by Subdivision (8)(B), Section 11.002, of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 1.10.

Sec. 11.038. RIGHTS OF OWNERS OF LAND ADJOINING CANAL, ETC. (a) A person who owns or holds a possessory interest in land adjoining or contiguous to a canal, ditch, flume, lateral, dam, reservoir, or lake constructed and maintained under the provisions of this chapter and who has secured a right to the use of water in the canal, ditch, flume, lateral, dam, reservoir, or lake is entitled to be supplied from the canal, ditch, flume, lateral, dam, reservoir, or lake with water for agricultural uses, mining, milling, manufacturing, development of power, and stock raising, in accordance with the terms of the person's contract.

(b) If the person, association of persons, or corporation owning or controlling the water and the person who owns or holds a possessory interest in the adjoining land cannot agree on a price for a permanent water right or for the use of enough water for irrigation of the person's land or for agricultural uses, mining, milling, manufacturing, development of power, or stock raising, then the party owning or controlling the water, if the person has any water not contracted to others, shall furnish the water necessary for these purposes at reasonable and nondiscriminatory prices.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 966, Sec. 2.04, eff. Sept. 1, 2001.

Sec. 11.039. DISTRIBUTION OF WATER DURING SHORTAGE. (a) If a shortage of water in a water supply not covered by a water conservation plan prepared in compliance with Texas Natural Resource Conservation Commission or Texas Water Development Board rules results from drought, accident, or other cause, the water to be distributed shall be divided among all customers pro rata, according to the amount each may be entitled to, so that preference is given to no one and everyone suffers alike.

(b) If a shortage of water in a water supply covered by a water conservation plan prepared in compliance with Texas Natural Resource Conservation Commission or Texas Water Development Board rules results from drought, accident, or other cause, the person, association of persons, or corporation owning or controlling the water shall divide the water to be distributed among all customers pro rata, according to:

(1) the amount of water to which each customer may be entitled; or

(2) the amount of water to which each customer may be entitled, less the amount of water the customer would have saved if the customer had operated its water system in compliance with the water conservation plan.

(c) Nothing in Subsection (a) or (b) precludes the person, association of persons, or corporation owning or controlling the water from supplying water to a person who has a prior vested right to the water under the laws of this state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 1126, Sec. 1, eff. June 15, 2001.

Sec. 11.040. PERMANENT WATER RIGHT. (a) A permanent water right is an easement and passes with the title to land.

(b) A written instrument conveying a permanent water right may be recorded in the same manner as any other instrument relating to a conveyance of land.

(c) The owner of a permanent water right is entitled to use water according to the terms of his contract. If there is no contract, the owner is entitled to use water at a just, reasonable, and nondiscriminatory price.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept.

1, 1977.

Sec. 11.041. DENIAL OF WATER: COMPLAINT. (a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the commission a written petition showing:

(1) that he is entitled to receive or use the water;

(2) that he is willing and able to pay a just and reasonable price for the water;

(3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.

(b) If the petition is accompanied by a deposit of $25, the executive director shall have a preliminary investigation of the complaint made and determine whether or not there are probable grounds for the complaint.

(c) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint, the commission shall enter an order setting a time and place for a hearing on the petition.

(d) The commission may require the complainant to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission conditioned on the payment of all costs of the proceeding.

(e) At least 20 days before the date set for the hearing, the commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) The commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. The utility commission may participate in the hearing if necessary to present evidence on the price or rental demanded for the available water. On completion of the hearing, the commission shall render a written decision.

(g) If, after the preliminary investigation, the executive director determines that no probable grounds exist for the complaint, the executive director shall dismiss the complaint. The commission may either return the deposit or pay it into the State Treasury.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.005, eff. Sept. 1, 1985.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.06, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 6, eff. September 1, 2013.

Sec. 11.042. DELIVERING WATER DOWN BANKS AND BEDS. (a) Under rules prescribed by the commission, a person, association of persons, corporation, water control and improvement district, water improvement district, or irrigation district supplying stored or conserved water under contract as provided in this chapter may use the bank and bed of any flowing natural stream in the state to convey the water from the place of storage to the place of use or to the diversion point of the appropriator.

(a-1) With prior authorization granted under rules prescribed by the commission, a person, association of persons, corporation, water control and improvement district, water improvement district, or irrigation district supplying water imported from a source located wholly outside the boundaries of this state, except water imported from a source located in the United Mexican States, may use the bed and banks of any flowing natural stream in the state to convey water for use in this state. The authorization must:

(1) allow for the diversion of only the amount of water put into a watercourse or stream, less carriage losses; and

(2) include special conditions adequate to prevent a significant impact to the quality of water in this state.

(b) A person who wishes to discharge and then subsequently divert and reuse the person's existing return flows derived from privately owned groundwater must obtain prior authorization from the commission for the diversion and the reuse of these return flows. The authorization may allow for the diversion and reuse by the

discharger of existing return flows, less carriage losses, and shall be subject to special conditions if necessary to protect an existing water right that was granted based on the use or availability of these return flows. Special conditions may also be provided to help maintain instream uses and freshwater inflows to bays and estuaries. A person wishing to divert and reuse future increases of return flows derived from privately owned groundwater must obtain authorization to reuse increases in return flows before the increase.

(c) Except as otherwise provided in Subsection (a) of this section, a person who wishes to convey and subsequently divert water in a watercourse or stream must obtain the prior approval of the commission through a bed and banks authorization. The authorization shall allow to be diverted only the amount of water put into a watercourse or stream, less carriage losses and subject to any special conditions that may address the impact of the discharge, conveyance, and diversion on existing permits, certified filings, or certificates of adjudication, instream uses, and freshwater inflows to bays and estuaries. Water discharged into a watercourse or stream under this chapter shall not cause a degradation of water quality to the extent that the stream segment's classification would be lowered. Authorizations under this section and water quality authorizations may be approved in a consolidated permit proceeding.

(d) Nothing in this section shall be construed to affect an existing project for which water rights and reuse authorizations have been granted by the commission before September 1, 1997.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.006, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 2.06, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1016 (H.B. 4231), Sec. 2, eff. June 19, 2009.

Sec. 11.043. RECORDATION OF CONVEYANCE OF IRRIGATION WORK. (a) A conveyance of a ditch, canal, or reservoir or other irrigation work or an interest in such an irrigation work must be executed and acknowledged in the same manner as a conveyance of real estate. Such a conveyance must be recorded in the deed records of the county in which the ditch, canal, or reservoir is located.

(b) If a conveyance of property covered by Subsection (a) of this section is not made in the prescribed manner, it is null and void against subsequent purchasers in good faith and for valuable consideration.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.044. ROADS AND HIGHWAYS. (a) An appropriator has the right to construct ditches, canals, or pipelines along or across all roads and highways necessary for the construction of waterworks. Bridges, culverts, or siphons shall be constructed at all road and highway crossings as necessary to prevent any impairment of the uses of the road or highway. Approval of the construction plans and specifications shall be obtained from the owner of the road or highway prior to the installation of conveyance facilities.

(b) If any public road, highway, or public bridge is located on the ground necessary for a damsite, reservoir, or lake, the commissioners court shall change the road and remove the bridge so that it does not interfere with the construction of the proposed dam, reservoir, or lake. The party desiring to construct the dam, reservoir, or lake shall pay the expense of moving the bridge or roadway.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 939, ch. 353, Sec. 1, eff. Aug. 31, 1981.

Sec. 11.045. DITCHES AND CANALS. An appropriator is entitled to construct ditches and canals along or across any stream of water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.046. RETURN SURPLUS WATER. (a) A person who takes or diverts water from a watercourse or stream for the purposes authorized by this code shall conduct surplus water back to the watercourse or stream from which it was taken if the water can be

returned by gravity flow and it is reasonably practicable to do so.

(b) In granting an application for a water right, the commission may include conditions in the water right providing for the return of surplus water, in a specific amount or percentage of water diverted, and the return point on a watercourse or stream as necessary to protect senior downstream permits, certified filings, or certificates of adjudication or to provide flows for instream uses or bays and estuaries.

(c) Except as specifically provided otherwise in the water right, water appropriated under a permit, certified filing, or certificate of adjudication may, prior to its release into a watercourse or stream, be beneficially used and reused by the holder of a permit, certified filing, or certificate of adjudication for the purposes and locations of use provided in the permit, certified filing, or certificate of adjudication. Once water has been diverted under a permit, certified filing, or certificate of adjudication and then returned to a watercourse or stream, however, it is considered surplus water and therefore subject to reservation for instream uses or beneficial inflows or to appropriation by others unless expressly provided otherwise in the permit, certified filing, or certificate of adjudication.

(d) Water appropriated under a permit, certified filing, or certificate of adjudication which is recirculated within a reservoir for cooling purposes shall not be considered to be surplus for purposes of this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1010, Sec. 2.07, eff. Sept. 1, 1997.

Sec. 11.047. FAILURE TO FENCE. If a person, association of persons, corporation, or water improvement or irrigation district that owns or controls a ditch, canal, reservoir, dam, or lake does not keep it securely fenced, there is no cause of action against the owner of livestock that trespass.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.048. COST OF MAINTAINING IRRIGATION DITCH. (a) If an irrigation ditch is owned or used by two or more persons, mutual or cooperative companies, or corporations, each party who has an interest in the ditch shall pay his proportionate share of the cost of operating and maintaining the ditch.

(b) If a person who owns a joint interest in a ditch refuses to do or to pay for his proportionate share of the work that is reasonably necessary for the proper maintenance and operation of the ditch, the other owners may, after giving him 10 days written notice, proceed themselves to do his share of the necessary work and recover from him the reasonable expense or value of the work or labor performed. The action for the cost of the work may be brought in any court having jurisdiction over the amount in controversy.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.049. EXAMINATION AND SURVEY. A person may make any necessary examination and survey in order to select the most advantageous sites for a reservoir and rights-of-way to be used for any of the purposes authorized by this chapter, and for this purpose a person may enter the land or water of any other person.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.050. TIDEWATER GATES, ETC. (a) An appropriator authorized to take water for irrigation, subject to the laws of the United States and the regulations made under its authority, may construct gates or breakwaters, dams, or dikes with gates, in waters wholly in this state, as necessary to prevent pollution of the fresh water of any river, bayou, or stream due to the ebb and flow of the tides of the Gulf of Mexico.

(b) The work shall be done in such a manner that navigation of vessels on the stream is not obstructed, and where any gate is used, the appropriator shall at all times keep a competent person at the gate to allow free navigation.

(c) A dam, dike, or breakwater constructed under this section may not be placed at any point except where Gulf tides ebb and flow

and may not be constructed so as to obstruct the flow of fresh water to any appropriator or riparian owner downstream.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.051. IRRIGATION: LIEN ON CROPS. (a) A person who constructs a ditch, canal, dam, lake, or reservoir for the purpose of irrigation and who leases, rents, furnishes, or supplies water to any person for irrigation, with or without a contract, has a preference lien superior to every other lien on the irrigated crops. However, when any irrigation district or conservation and reclamation district obtains a water supply under contract with the United States, the board of directors of the district, by resolution entered in its minutes, with the consent of the secretary of the interior, may waive the preference lien in whole or in part.

(b) To enforce the lien, the lienholder has all the rights and remedies prescribed by Articles 5222 through 5239, Revised Civil Statutes of Texas, 1925.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.052. ACTIVITIES UNDER THE FEDERAL RECLAMATION ACT. The Secretary of the Interior of the United States is authorized to conduct any activities in this state necessary to perform his duties under the federal reclamation act, as amended (43 U.S.C. Section 371 et seq.).

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a) During a period of drought or other emergency shortage of water, as defined by commission rule, the executive director by order may, in accordance with the priority of water rights established by Section 11.027:

(1) temporarily suspend the right of any person who holds a

water right to use the water; and

(2) temporarily adjust the diversions of water by water rights holders.

(b) The executive director in ordering a suspension or adjustment under this section shall ensure that an action taken:

(1) maximizes the beneficial use of water;

(2) minimizes the impact on water rights holders;

(3) prevents the waste of water;

(4) takes into consideration the efforts of the affected water rights holders to develop and implement the water conservation plans and drought contingency plans required by this chapter;

(5) to the greatest extent practicable, conforms to the order of preferences established by Section 11.024; and

(6) does not require the release of water that, at the time the order is issued, is lawfully stored in a reservoir under water rights associated with that reservoir.

(c) The commission shall adopt rules to implement this section, including rules:

(1) defining a drought or other emergency shortage of water for purposes of this section; and

(2) specifying the:

(A) conditions under which the executive director may issue an order under this section;

(B) terms of an order issued under this section, including the maximum duration of a temporary suspension or adjustment under this section; and

(C) procedures for notice of, an opportunity for a hearing on, and the appeal to the commission of an order issued under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 5.03, eff. September 1, 2011.

SUBCHAPTER C. UNLAWFUL USE, DIVERSION, WASTE, ETC.

Sec. 11.081. UNLAWFUL USE OF STATE WATER. No person may wilfully take, divert, or appropriate any state water for any purpose without first complying with all applicable requirements of this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept.

1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 3, eff. Sept. 1, 1997.

Sec. 11.082. UNLAWFUL USE: CIVIL PENALTY. (a) A person who wilfully takes, diverts, or appropriates state water without complying with the applicable requirements of this chapter is also liable to a civil penalty of not more than $5,000 for each day he continues the taking, diversion, or appropriation.

(a-1) Notwithstanding Section 18.002, this section does not apply to a violation of:

(1) Section 18.003 or a permit issued under that section; or

(2) Section 18.004 or an authorization granted under that section.

(b) The state may recover the penalties prescribed in Subsection (a) by suit brought for that purpose in a court of competent jurisdiction. The state may seek those penalties regardless of whether a watermaster has been appointed for the water division, river basin, or segment of a river basin where the unlawful use is alleged to have occurred.

(c) An action to collect the penalty provided in this section must be brought within two years from the date of the alleged violation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1997, 75th Leg., ch. 1010, Sec. 3.01, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.08, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.08, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 6, eff. June 17, 2015.

Sec. 11.083. OTHER UNLAWFUL TAKING. (a) No person may wilfully open, close, change, or interfere with any headgate or water box without lawful authority.

(b) No person may wilfully use water or conduct water through his ditch or upon his land unless he is entitled to do so.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 4, eff. Sept. 1, 1997.

Sec. 11.084. SALE OF PERMANENT WATER RIGHT WITHOUT A PERMIT. No person may sell or offer to sell a permanent water right unless he has perfected a right to appropriate state water by a certified filing, or unless he has obtained a permit from the commission, authorizing the use of the water for the purposes for which the permanent water right is conveyed.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 5, eff. Sept. 1, 1997.

Sec. 11.0841. CIVIL REMEDY. (a) Nothing in this chapter affects the right of any private corporation, individual, or political subdivision that has a justiciable interest in pursuing any available common-law remedy to enforce a right or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury.

(b) A district court may award the costs of litigation, including reasonable attorney fees and expert costs, to any political subdivision of the state, private corporation, or individual that is a water right holder and that prevails in a suit for injunctive relief to redress an unauthorized diversion, impoundment, or use of surface water in violation of this chapter or a rule adopted pursuant to this chapter.

(c) For purposes of this section, the Parks and Wildlife Department has:

(1) the rights of a holder of a water right that is held in the Texas Water Trust, including the right to file suit in a civil court to prevent the unlawful use of such a right;

(2) the right to act in the same manner that a holder of a water right may act to protect the holder's rights in seeking to prevent any person from appropriating water in violation of a set-aside established by the commission under Section 11.1471 to meet instream flow needs or freshwater inflow needs; and

(3) the right to file suit in a civil court to prevent the unlawful use of a set-aside established under Section 11.1471.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 3.02, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.09, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.09, eff. September 1, 2007.

Sec. 11.0842. ADMINISTRATIVE PENALTY. (a) If a person violates this chapter, a rule or order adopted under this chapter or Section 16.236, or a permit, certified filing, or certificate of adjudication issued under this chapter, the commission may assess an administrative penalty against that person as provided by this section. The commission may assess an administrative penalty for a violation relating to a water division or a river basin or segment of a river basin regardless of whether a watermaster has been appointed for the water division or river basin or segment of the river basin.

(a-1) Notwithstanding Section 18.002, this section does not apply to a violation of:

(1) Section 18.003 or a permit issued under that section; or

(2) Section 18.004 or an authorization granted under that section.

(b) The penalty may be in an amount not to exceed $5,000 for each day the person is in violation of this chapter, the rule or order adopted under this chapter, or the permit, certified filing, or certificate of adjudication issued under this chapter. The penalty may be in an amount not to exceed $1,000 for each day the person is in violation of the rule or order adopted under Section 16.236 of this code. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts, with special emphasis on the impairment of an existing permit, certified filing, or certificate of

adjudication or the hazard or potential hazard created to the health, safety, or welfare of the public;

(2) the impact of the violation on the instream uses, water quality, fish and wildlife habitat, or beneficial freshwater inflows to bays and estuaries;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violations; and

(4) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director shall issue a preliminary report stating the facts on which that conclusion was based, recommending that an administrative penalty under this section be imposed on the person charged, and recommending the amount of the penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (c) of this section and shall analyze each factor for the benefit of the commission.

(e) No later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) No later than the 20th day after the date on which notice is received, the person charged may either give to the commission written consent to the executive director's report, including the

recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the executive director or fails to timely respond to the notice, the commission by order shall either assess the penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty recommended by the report, the commission shall give written notice of its decision to the person charged.

(h) If the person charged requests or the commission orders a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order either may find that a violation has occurred and may assess a penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the commission shall analyze each of the factors provided by Subsection (c) of this section.

(i) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and assesses an administrative penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of the person's right to judicial review of the commission's order. If the commission is required to give notice of a penalty under this subsection or Subsection (g) of this section, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(j) Within the 30-day period immediately following the day on which the commission's order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person charged with the penalty shall:

(1) pay the penalty in full;

(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 that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commission'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 commission by certified mail.

(l) If the commission receives a copy of an affidavit under Subsection (k)(2) of this section, it 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 or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(o) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(p) Notwithstanding any other provision to the contrary, the

commission may compromise, modify, or remit, with or without condition, any penalty imposed under this section.

(q) Payment of an administrative penalty under this section shall be full and complete satisfaction of the violation for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 3.02, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.10, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.10, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 7, eff. June 17, 2015.

Sec. 11.0843. FIELD CITATION. (a) Upon witnessing a violation of this chapter or a rule or order or a water right issued under this chapter, the executive director or a person designated by the executive director, including a watermaster or the watermaster's deputy, may issue the alleged violator a field citation alleging that a violation has occurred and providing the alleged violator the option of either:

(1) without admitting to or denying the alleged violation, paying an administrative penalty in accordance with the predetermined penalty amount established under Subsection (b) and taking remedial action as provided in the citation; or

(2) requesting a hearing on the alleged violation in accordance with Section 11.0842.

(b) By rule the commission shall establish penalty amounts corresponding to types of violations of this chapter or rules or orders adopted or water rights issued under this chapter.

(c) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 3.02, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.11, eff.

September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.11, eff. September 1, 2007.

Sec. 11.085. INTERBASIN TRANSFERS. (a) No person may take or divert any state water from a river basin in this state and transfer such water to any other river basin without first applying for and receiving a water right or an amendment to a permit, certified filing, or certificate of adjudication from the commission authorizing the transfer.

(b) The application must include:

(1) the contract price of the water to be transferred;

(2) a statement of each general category of proposed use of the water to be transferred and a detailed description of the proposed uses and users under each category; and

(3) the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users.

(c) The applicant shall provide the information described by Subsection (b) of this section to any person on request and without cost.

(d) Prior to taking action on an application for an interbasin transfer, the commission shall conduct at least one public meeting to receive comments in both the basin of origin of the water proposed for transfer and the basin receiving water from the proposed transfer. Notice shall be provided pursuant to Subsection (g) of this section. Any person may present relevant information and data at the meeting on the criteria which the commission is to consider related to the interbasin transfer.

(e) In addition to the public meetings required by Subsection (d), if the application is contested in a manner requiring an evidentiary hearing under the rules of the commission, the commission shall give notice and hold an evidentiary hearing, in accordance with commission rules and applicable state law. An evidentiary hearing on an application to transfer water authorized under an existing water right is limited to considering issues related to the requirements of this section.

(f) Notice of an application for an interbasin transfer shall be mailed to the following:

(1) all holders of permits, certified filings, or certificates of adjudication located in whole or in part in the basin of origin;

(2) each county judge of a county located in whole or in part in the basin of origin;

(3) each mayor of a city with a population of 1,000 or more located in whole or in part in the basin of origin; and

(4) all groundwater conservation districts located in whole or in part in the basin of origin; and

(5) each state legislator in both basins.

(g) The applicant shall cause the notice of application for an interbasin transfer to be published in two different weeks within a 30-day period in one or more newspapers having general circulation in each county located in whole or in part in the basin of origin or the receiving basin. The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The notice of application and public meetings shall be combined in the mailed and published notices.

(h) The notice of application must state how a person may obtain the information described by Subsection (b) of this section.

(i) The applicant shall pay the cost of notice required to be provided under this section. The commission by rule may establish procedures for payment of those costs.

(j) In addition to other requirements of this code relating to the review of and action on an application for a new water right or amended permit, certified filing, or certificate of adjudication, the commission shall:

(1) request review and comment on an application for an interbasin transfer from each county judge of a county located in whole or in part in the basin of origin. A county judge should make comment only after seeking advice from the county commissioners court; and

(2) give consideration to the comments of each county judge of a county located in whole or in part in the basin of origin prior to taking action on an application for an interbasin transfer.

(k) In addition to other requirements of this code relating to the review of and action on an application for a new water right or amended permit, certified filing, or certificate of adjudication, the commission shall weigh the effects of the proposed transfer by

considering:

(1) the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply is requested, but not to exceed 50 years;

(2) factors identified in the applicable approved regional water plans which address the following:

(A) the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer;

(B) the amount and purposes of use in the receiving basin for which water is needed;

(C) proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures;

(D) proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use;

(E) the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and

(F) the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries that must be assessed under Sections 11.147, 11.150, and 11.152 of this code in each basin. If the water sought to be transferred is currently authorized to be used under an existing permit, certified filing, or certificate of adjudication, such impacts shall only be considered in relation to that portion of the permit, certified filing, or certificate of adjudication proposed for transfer and shall be based on historical uses of the permit, certified filing, or certificate of adjudication for which amendment is sought;

(3) proposed mitigation or compensation, if any, to the basin of origin by the applicant;

(4) the continued need to use the water for the purposes authorized under the existing permit, certified filing, or certificate of adjudication, if an amendment to an existing water right is sought; and

(5) the information required to be submitted by the applicant.

(l) The commission may grant, in whole or in part, an application for an interbasin transfer only to the extent that:

(1) the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period, as determined by the commission based on consideration of the factors described by Subsection (k); and

(2) the applicant for the interbasin transfer has prepared a drought contingency plan and has developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the applicant.

(m) The commission may grant new or amended water rights under this section with or without specific terms or periods of use and with specific conditions under which a transfer of water may occur.

(n) If the transfer of water is based on a contractual sale of water, the new water right or amended permit, certified filing, or certificate of adjudication authorizing the transfer shall contain a condition for a term or period not greater than the term of the contract, including any extension or renewal of the contract.

(o) The parties to a contract for an interbasin transfer may include provisions for compensation and mitigation. If the party from the basin of origin is a government entity, each county judge of a county located in whole or in part in the basin of origin may provide input on the appropriate compensation and mitigation for the interbasin transfer.

(p) A river basin may not be redesignated in order to allow a transfer or diversion of water otherwise in violation of this section.

(q) A person who takes or diverts water in violation of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $1,000 or by confinement in the county jail for not more than six months.

(r) A person commits a separate offense each day he continues to take or divert water in violation of this section.

(s) Any proposed transfer of all or a portion of a water right under this section is junior in priority to water rights granted before the time application for transfer is accepted for filing.

(t) Any proposed transfer of all or a portion of a water right under this section from a river basin in which two or more river authorities or water districts created under Section 59, Article XVI, Texas Constitution, have written agreements or permits that provide

for the coordinated operation of their respective reservoirs to maximize the amount of water for beneficial use within their respective water services areas shall be junior in priority to water rights granted before the time application for transfer is accepted for filing.

(u) An appropriator of water for municipal purposes in the basin of origin may, at the appropriator's option, be a party in any hearings under this section.

(v) The provisions of this section, except Subsection (a), do not apply to:

(1) a proposed transfer which in combination with any existing transfers totals less than 3,000 acre-feet of water per annum from the same permit, certified filing, or certificate of adjudication;

(2) a request for an emergency transfer of water;

(3) a proposed transfer from a basin to its adjoining coastal basin;

(4) a proposed transfer from the part of the geographic area of a county or municipality, or the part of the retail service area of a retail public utility as defined by Section 13.002, that is within the basin of origin for use in that part of the geographic area of the county or municipality, or that contiguous part of the retail service area of the utility, not within the basin of origin; or

(5) a proposed transfer of water that is:

(A) imported from a source located wholly outside the boundaries of this state, except water that is imported from a source located in the United Mexican States;

(B) for use in this state; and

(C) transported by using the bed and banks of any flowing natural stream located in this state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1010, Sec. 2.08, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.05, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1234, Sec. 12, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1016 (H.B. 4231), Sec. 3, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1065 (H.B. 3233), Sec. 1, eff.

September 1, 2013.

Sec. 11.086. OVERFLOW CAUSED BY DIVERSION OF WATER. (a) No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.

(b) A person whose property is injured by an overflow of water caused by an unlawful diversion or impounding has remedies at law and in equity and may recover damages occasioned by the overflow.

(c) The prohibition of Subsection (a) of this section does not in any way affect the construction and maintenance of levees and other improvements to control floods, overflows, and freshets in rivers, creeks, and streams or the construction of canals for conveying water for irrigation or other purposes authorized by this code. However, this subsection does not authorize any person to construct a canal, lateral canal, or ditch that obstructs a river, creek, bayou, gully, slough, ditch, or other well-defined natural drainage.

(d) Where gullies or sloughs have cut away or intersected the banks of a river or creek to allow floodwaters from the river or creek to overflow the land nearby, the owner of the flooded land may fill the mouth of the gullies or sloughs up to the height of the adjoining banks of the river or creek without liability to other property owners.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.087. DIVERSION OF WATER ON INTERNATIONAL STREAM. (a) When storm water or floodwater is released from a dam or reservoir on an international stream and the water is designated for use or storage downstream by a specified user who is legally entitled to receive it, no other person may store, divert, appropriate, or use the water or interfere with its passage downstream.

(b) The commission may make and enforce rules and orders to implement the provisions of this section, including rules and orders designed to:

(1) establish an orderly system for water releases and diversions in order to protect vested rights and to avoid the loss of released water;

(2) prescribe the time that releases of water may begin and end;

(3) determine the proportionate quantities of the released water in transit and the water that would have been flowing in the stream without the addition of the released water;

(4) require each owner or operator of a dam or reservoir on the stream between the point of release and the point of destination to allow free passage of the released water in transit; and

(5) establish other requirements the commission considers necessary to effectuate the purposes of this section.

(c) Orders made by the commission to effectuate its rules under this section shall be mailed by certified mail to each diverter of water and to each reservoir owner on the stream between the point of release and the point of destination of the released water as shown by the records of the commission.

(d) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(a)(1), eff. Sept. 1, 1997.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.007, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1072, Sec. 6, 60(a)(1), eff. Sept. 1, 1997.

Sec. 11.0871. TEMPORARY DIVERSION OF WATER ON INTERNATIONAL STREAM. (a) The commission may authorize, under conditions stated in an order, a watermaster to provide for the temporary diversion and use by holders of water rights of storm water or floodwater that spills from dams and reservoirs on an international stream and otherwise would flow into the Gulf of Mexico without opportunity for beneficial use.

(b) In an order made by the commission under this section, the commission may not discriminate between holders of water rights from an international stream except to the extent necessary to protect the holders of water rights from the same source of supply.

(c) The commission shall give notice by mail to holders of water rights from an international stream and shall hold an

evidentiary hearing before entry of an order under this section.

Added by Acts 1981, 67th Leg., p. 293, ch. 117, Sec. 1, eff. May 13, 1981.

Sec. 11.088. DESTRUCTION OF WATERWORKS. No person may wilfully cut, dig, break down, destroy, or injure or open a gate, bank, embankment, or side of any ditch, canal, reservoir, flume, tunnel or feeder, pump or machinery, building, structure, or other work which is the property of another, or in which another owns an interest, or which is lawfully possessed or being used by another, and which is used for milling, mining, manufacturing, the development of power, domestic purposes, agricultural uses, or stock raising, with intent to:

(1) maliciously injure a person, association, corporation, water improvement or irrigation district;

(2) gain advantage for himself; or

(3) take or steal water or cause water to run out or waste out of the ditch, canal, or reservoir, feeder, or flume for his own advantage or to the injury of a person lawfully entitled to the use of the water or the use or management of the ditch, canal, tunnel, reservoir, feeder, flume, machine, structure, or other irrigation work.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 7, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.06, eff. Sept. 1, 2001.

Sec. 11.089. JOHNSON GRASS OR RUSSIAN THISTLE. (a) No person who owns, leases, or operates a ditch, canal, or reservoir or who cultivates land abutting a reservoir, ditch, flume, canal, wasteway, or lateral may permit Johnson grass or Russian thistle to go to seed on the waterway within 10 feet of the high-water line if the waterway crosses or lies on the land owned or controlled by him.

(b) The provisions of this section are not applicable in Tom Green, Sterling, Irion, Schleicher, McCullough, Brewster, Menard, Maverick, Kinney, Val Verde, and San Saba counties.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept.

1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 8, eff. Sept. 1, 1997.

Sec. 11.090. POLLUTING AND LITTERING. No person may deposit in any canal, lateral, reservoir, or lake, used for a purpose named in this chapter, the carcass of any dead animal, tin cans, discarded buckets or pails, garbage, ashes, bailing or barbed wire, earth, offal, or refuse of any character or any other article which might pollute the water or obstruct the flow of a canal or similar structure.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 9, eff. Sept. 1, 1997.

Sec. 11.091. INTERFERENCE WITH DELIVERY OF WATER UNDER CONTRACT. No person may wilfully take, divert, appropriate, or interfere with the delivery of conserved or stored water under Section 11.042 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 10, eff. Sept. 1, 1997.

Sec. 11.092. WASTEFUL USE OF WATER. A person who owns or has a possessory right to land contiguous to a canal or irrigation system and who acquires the right by contract to use the water from it commits waste if he:

(1) permits the excessive or wasteful use of water by any of his agents or employees; or

(2) permits the water to be applied to anything but a beneficial use.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.093. ABATEMENT OF WASTE AS PUBLIC NUISANCE. (a) A person who permits an unreasonable loss of water through faulty design or negligent operation of any waterworks using water for a

purpose named in this chapter commits waste, and the commission may declare the works causing the waste to be a public nuisance. The commission may take the necessary action to abate the nuisance. Also, any person who may be injured by the waste may sue in the district court having jurisdiction over the works causing the waste to have the operation of the works abated as a public nuisance.

(b) In case of a wasteful use of water defined by Section 11.092 of this code, the commission shall declare the use to be a public nuisance and shall act to abate the nuisance by directing the person supplying the water to close the water gates of the person wasting the water and to keep them closed until the commission determines that the unlawful use of water is corrected.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.094. PENALTY FOR USE OF WORKS DECLARED PUBLIC NUISANCE. No person may operate or attempt to operate any waterworks or irrigation system or use any water under contract with any waterworks or irrigation system that has been previously declared to be a public nuisance.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 11, eff. Sept. 1, 1997.

Sec. 11.096. OBSTRUCTION OF NAVIGABLE STREAMS. No person may obstruct the navigation of any stream which can be navigated by steamboats, keelboats, or flatboats by cutting and felling trees or by building on or across the stream any dike, milldam, bridge, or other obstruction.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 12, eff. Sept. 1, 1997.

Sec. 11.097. REMOVAL OF OBSTRUCTIONS FROM NAVIGABLE STREAMS. (a) On its own motion or on written request from a commissioners

court, the commission shall investigate a reported natural obstruction in a navigable stream caused by the accumulation of limbs, logs, leaves, other tree parts, or other debris. If making the investigation on request of a commissioners court, the commission must make its investigation not later than the 30th day after the date on which it receives the written request from the commissioners court.

(b) On completion of the investigation, if the commission determines that the obstruction is creating a hazard or is having other detrimental effect on the navigable stream, the commission shall initiate action to remove the obstruction.

(c) In removing an obstruction, the commission may solicit the assistance of federal and state agencies including the Corps of Engineers, Texas National Guard, the Parks and Wildlife Department, and districts and authorities created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution. Also, the commission may enter into contracts for services required to remove an obstruction. However, no river authority may require the removal, relocation, or reconfiguration of a floating structure which was in place before the effective date of this Act and the effective date of any ordinance, rule, resolution, or other act of the river authority mandating such action unless the commission determines the structure is an obstruction to navigation.

Added by Acts 1987, 70th Leg., ch. 295, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. PERMITS TO USE STATE WATER

Sec. 11.121. PERMIT REQUIRED. Except as provided in Sections 11.1405, 11.142, 11.1421, 11.1422, and 18.003, no person may appropriate any state water or begin construction of any work designed for the storage, taking, or diversion of water without first obtaining a permit from the commission to make the appropriation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 544, Sec. 1, eff. Aug. 31, 1987; Acts 1995, 74th Leg., ch. 183, Sec. 1, eff. May 23, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 8, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 829 (H.B. 4097), Sec. 3, eff.

June 17, 2015.

Sec. 11.122. AMENDMENTS TO WATER RIGHTS REQUIRED. (a) All holders of permits, certified filings, and certificates of adjudication issued under Section 11.323 of this code shall obtain from the commission authority to change the place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated, or otherwise alter a water right. Without obtaining an amendment, the holder of a permit, certified filing, or certificate of adjudication that includes industrial or irrigation use may use or supply water for an agricultural use that was classified as industrial or irrigation before September 1, 2001.

(b) Subject to meeting all other applicable requirements of this chapter for the approval of an application, an amendment, except an amendment to a water right that increases the amount of water authorized to be diverted or the authorized rate of diversion, shall be authorized if the requested change will not cause adverse impact on other water right holders or the environment on the stream of greater magnitude than under circumstances in which the permit, certified filing, or certificate of adjudication that is sought to be amended was fully exercised according to its terms and conditions as they existed before the requested amendment.

(b-1) A holder of a water right that begins using desalinated seawater after acquiring the water right has a right to expedited consideration of an application for an amendment to the water right if the amendment:

(1) authorizes the applicant to divert water from a diversion point that is different from or in addition to the point or points from which the applicant was authorized to divert water before the requested amendment;

(2) authorizes the applicant to divert from the different or additional diversion point an amount of water that is equal to or less than the amount of desalinated seawater used by the applicant;

(3) authorizes the applicant to divert from all of the diversion points authorized by the water right an amount of water that is equal to or less than the amount of water the applicant was authorized to divert under the water right before the requested amendment;

(4) authorizes the applicant to divert water from all of

the diversion points authorized by the water right at a combined rate that is equal to or less than the combined rate at which the applicant was authorized to divert water under the water right before the requested amendment; and

(5) does not authorize the water diverted from the different or additional diversion point to be transferred to another river basin.

(b-2) The executive director or the commission shall prioritize the technical review of an application that is subject to Subsection (b-1) over the technical review of applications that are not subject to that subsection.

(b-3) In addition to an application that meets the requirements of Subsection (b) and for which the commission has determined that notice or an opportunity for a contested case hearing is not required under another statute or a commission rule, an application for an amendment to a water right is exempt from any requirements of a statute or commission rule regarding notice and hearing or technical review by the executive director or the commission and may not be referred to the State Office of Administrative Hearings for a contested case hearing if the executive director determines after an administrative review that the application is for an amendment that:

(1) adds a purpose of use that does not substantially alter:

(A) the nature of the right from a right authorizing only nonconsumptive use to a right authorizing consumptive use; or

(B) a pattern of use that is explicitly authorized in or required by the original right;

(2) adds a place of use located in the same basin as the place of use authorized by the original right; or

(3) changes the point of diversion, provided that:

(A) the authorized rate of diversion is not increased;

(B) the original point of diversion and the new point of diversion are located in the same contiguous tract of land;

(C) the original point of diversion and the new point of diversion are from the same source of supply;

(D) there are no points of diversion from the same source of supply associated with other water rights that are located between the original point of diversion and the new point of diversion;

(E) there are no streamflow gauges located on the

source of supply between the original point of diversion and the new point of diversion that are referenced in the original water right or in another water right authorizing a diversion from the same source of supply; and

(F) there are no tributary watercourses that enter the watercourse that is the source of supply located between the original point of diversion and the new point of diversion.

(c) The commission shall adopt rules to effectuate the provisions of this section.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.008, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 1.03, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.07, eff. Sept. 1, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 429 (S.B. 1430), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 17.001, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 534 (H.B. 1964), Sec. 1, eff. June 10, 2019.

Sec. 11.123. PERMIT PREFERENCES. The commission shall give preference to applications in the order declared in Section 11.024 of this code and to applications which will effectuate the maximum utilization of water and are calculated to prevent the escape of water without contribution to a beneficial public service.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.124. APPLICATION FOR PERMIT. (a) An application to appropriate unappropriated state water must:

(1) be in writing and sworn to;

(2) contain the name and post-office address of the applicant;

(3) identify the source of water supply;

(4) state the nature and purposes of the proposed use or uses and the amount of water to be used for each purpose;

(5) state the location and describe the proposed facilities;

(6) state the time within which the proposed construction is to begin;

(7) state the time required for the application of water to the proposed use or uses; and

(8) contain the name and address of the holder of any lien on:

(A) any water right permit, certified filing, or certificate of adjudication to be granted under the permit for which application is made; or

(B) any land to which that water right permit, certified filing, or certificate of adjudication would be appurtenant.

(b) If the proposed use is irrigation, the application must also contain:

(1) a description of the land proposed to be irrigated; and

(2) an estimate of the total acreage to be irrigated.

(c) If the application is for a seasonal permit, under the provisions of Section 11.137 of this code, the application must also state the months or seasons of the year the water is to be used.

(d) If the application is for a temporary permit under the provisions of Section 11.138 of this code, the application must also state the period of the proposed temporary use.

(e) If the application is for a term permit, the application form used must also state that on expiration of a term permit the applicant does not have an automatic right to renew the permit.

(f) If the application is for a permit to construct a storage reservoir, the application must also contain evidence that the applicant has mailed notice of the application to each member of the governing body of each county and municipality in which the reservoir, or any part of the reservoir, will be located.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 405, Sec. 3, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1010, Sec. 2.09, eff. June 19, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 1268 (H.B. 2140), Sec. 1, eff. September 1, 2005.

Sec. 11.125. MAP OR PLAT. (a) The application must be accompanied by a map or plat in the form and containing the information prescribed by the commission.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 7, eff. September 1, 2017.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 7, eff. September 1, 2017.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 7, eff. September 1, 2017.

Sec. 11.126. COMMISSION REQUIREMENTS. (a) If the proposed taking or diversion of water for irrigation exceeds nine cubic feet per second, the executive director may require additional information as prescribed by this section.

(b) The executive director may require a continuous longitudinal profile, cross sections of the proposed channel, and the detail plans of any proposed structure, on any scales and with any definition the executive director considers necessary or expedient.

(c) If the application proposes construction of a dam greater than six feet in height either for diversion or storage, the executive director may also require filing a copy of all plans and specifications and a copy of the engineer's field notes of any survey of the lake or reservoir. No work on the project shall proceed until approval of the plans is obtained from the executive director.

(d) If the applicant is a corporation, the commission may require filing a certified copy of its articles of incorporation, a statement of the names and addresses of its directors and officers, and a statement of the amount of its authorized capital stock and its paid-up capital stock.

(e) If the applicant is not a corporation, the commission may require filing a sworn statement showing the name and address of each person interested in the appropriation, the extent of his interest, and his financial condition.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3155, ch. 828, Sec. 2, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.009, eff. Sept. 1, 1985.

Sec. 11.127. ADDITIONAL REQUIREMENTS: DRAINAGE PLANS. If the commission believes that the efficient operation of any existing or proposed irrigation system may be adversely affected by lack of adequate drainage facilities incident to the work proposed to be done by an applicant, the commission may require the applicant to submit to the executive director for approval plans for drainage adequate to guard against any injury which the proposed work may entail.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981.

Sec. 11.1271. ADDITIONAL REQUIREMENTS: WATER CONSERVATION PLANS. (a) The commission shall require from an applicant for a new or amended water right the formulation and submission of a water conservation plan and the adoption of reasonable water conservation measures, as defined by Subdivision (8)(B), Section 11.002, of this code.

(b) The commission shall require the holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more for municipal, industrial, and other uses, and 10,000 acre-feet a year or more for irrigation uses, to develop, submit, and implement a water conservation plan, consistent with the appropriate approved regional water plan, that adopts reasonable water conservation measures as defined by Subdivision (8)(B), Section 11.002, of this code. The requirement for a water conservation plan under this section shall not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

(c) Beginning May 1, 2005, all water conservation plans required under this section must include specific, quantified 5-year and 10-year targets for water savings. The entity preparing the plan shall establish the targets. Targets must include goals for water loss programs and goals for municipal use in gallons per capita per day.

(d) The commission and the board jointly shall identify quantified target goals for water conservation that water suppliers and other entities may use as guidelines in preparing water conservation plans. Goals established under this subsection are not enforceable requirements.

(e) The commission and board jointly shall develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

(f) The commission shall adopt rules:

(1) establishing criteria and deadlines for submission of water conservation plans, including any required amendments, and for submission of implementation reports; and

(2) requiring the methodology and guidance for calculating water use and conservation developed under Section 16.403 to be used in the water conservation plans required by this section.

(g) At a minimum, rules adopted under Subsection (f)(2) must require an entity to report the most detailed level of municipal water use data currently available to the entity. The commission may not adopt a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 1.08. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 1.03, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 688, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 5, eff. September 1, 2011.

Sec. 11.1272. ADDITIONAL REQUIREMENT: DROUGHT CONTINGENCY PLANS FOR CERTAIN APPLICANTS AND WATER RIGHT HOLDERS. (a) The

commission shall by rule require wholesale and retail public water suppliers and irrigation districts to develop drought contingency plans consistent with the appropriate approved regional water plan to be implemented during periods of water shortages and drought.

(b) The wholesale and retail public water suppliers and irrigation districts shall provide an opportunity for public input during preparation of their drought contingency plans and before submission of the plans to the commission.

(c) By May 1, 2005, a drought contingency plan required by commission rule adopted under this section must include specific, quantified targets for water use reductions to be achieved during periods of water shortages and drought. The entity preparing the plan shall establish the targets.

(d) The commission and the board by joint rule shall identify quantified target goals for drought contingency plans that wholesale and retail public water suppliers, irrigation districts, and other entities may use as guidelines in preparing drought contingency plans. Goals established under this subsection are not enforceable requirements.

(e) The commission and the board jointly shall develop model drought contingency programs for different types of water suppliers that suggest best management practices for accomplishing the highest practicable levels of water use reductions achievable during periods of water shortages and drought for each specific type of water supplier.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 1.03, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 690, Sec. 1, eff. June 20, 2003.

Sec. 11.1273. ADDITIONAL REQUIREMENT: REVIEW OF AMENDMENTS TO CERTAIN WATER MANAGEMENT PLANS. (a) This section applies only to a water management plan consisting of a reservoir operation plan for the operation of two water supply reservoirs that was originally required by a court order adjudicating the water rights for those reservoirs.

(b) Not later than the first anniversary of the date the executive director determines that an application to amend a water management plan is administratively complete, the executive director

shall complete a technical review of the plan.

(c) If the executive director submits a written request for additional information to the applicant, the applicant shall submit the requested information to the executive director not later than the 30th day after the date the applicant receives the request or not later than the deadline agreed to by the executive director and the applicant, if applicable. The review period required by Subsection (b) for completing the technical review is tolled until the date the executive director receives the requested information from the applicant.

(d) The commission shall provide an opportunity for public comment and a public hearing on the application, consistent with the process for other water rights applications.

(e) If the commission receives a request for a hearing before the period for submitting public comments and requesting a hearing expires, the commission shall act on the request for a hearing and, if the request is denied, act on the application not later than the 60th day after the date the period expires. If a request for a hearing is not submitted before the period expires, the executive director may act on the application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 5.04, eff. September 1, 2011.

Sec. 11.128. PAYMENT OF FEE. The applicant shall pay the filing fee prescribed by Section 5.701 at the time the application is filed. The commission may not record, file, or consider the application until the executive director certifies to the commission that the fee is paid.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 26.001, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 4, eff. September 1, 2017.

Sec. 11.129. REVIEW OF APPLICATION; AMENDMENT. The commission

shall determine whether the application, maps, and other materials comply with the requirements of this chapter and the rules of the commission. The commission may require amendment of the application, maps, or other materials to achieve necessary compliance.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.009, eff. Sept. 1, 1985.

Sec. 11.130. RECORDING APPLICATIONS. (a) The executive director shall have all applications for appropriations recorded in a well-bound book kept for that purpose in the commission office.

(b) The executive director shall have the applications indexed alphabetically in the name of:

(1) the applicant;

(2) the stream or source from which the appropriation is sought to be made; and

(3) the county in which the appropriation is sought to be made.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.010, eff. Sept. 1, 1985.

Sec. 11.131. EXAMINATION AND DENIAL OF APPLICATION WITHOUT HEARING. (a) The commission shall make a preliminary examination of the application, and if it appears that there is no unappropriated water in the source of supply or that the proposed appropriation should not be allowed for other reasons, the commission may deny the application.

(b) If the commission denies the application under this section and the applicant elects not to proceed further, the commission may order any part of the fee submitted with the application returned to the applicant.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.1311. APPROVAL OF CERTAIN APPLICATIONS WITHOUT HEARING. (a) If a permit for a reservoir project which is listed on the effective date of this section as a recommended project in the current state water plan has been abandoned, voluntarily canceled, or forfeited for failure to commence construction within the time specified by law, and the reservoir project site is owned by a municipality, river authority, other political subdivision, or water supply corporation organized under Chapter 67, the commission may reissue that same permit with a new priority date to the board without notice or hearing, upon submission of an application by the board.

(b) The board may transfer interests in a permit issued under this section to a municipality, river authority, other political subdivision, or water supply corporation organized under Chapter 67 as otherwise provided by law.

(c) A permit issued pursuant to this section shall be administered in accordance with this chapter and as otherwise provided by law.

Added by Acts 1999, 76th Leg., ch. 1291, Sec. 2.01, eff. Sept. 1, 1999.

Sec. 11.132. NOTICE. (a) Notice shall be given to the persons who in the judgment of the commission may be affected by an application, including those persons listed in Subdivision (2), Subsection (d), of this section. The commission, on the motion of a commissioner or on the request of the executive director or any affected person, shall hold a public hearing on the application.

(b) If the proposed use is for irrigation, the commission shall include in the notice a general description of the location and area of the land to be irrigated.

(c) In the notice, the commission shall:

(1) state the name and address of the applicant;

(2) state the date the application was filed;

(3) state the purpose and extent of the proposed appropriation of water;

(4) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;

(5) identify any proposed alternative source of water,

other than state water, identified by the applicant;

(6) specify the time and location where the commission will consider the application; and

(7) give any additional information the commission considers necessary.

(d) The commission may act on the application without holding a public hearing if:

(1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located;

(2) not less than 30 days before the date of action on the application by the commission, the commission mails a copy of the notice by first-class mail, postage prepaid, to:

(A) each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed with the commission;

(B) each groundwater conservation district with jurisdiction over the proposed groundwater production, if the applicant proposes to use groundwater from a well located within a groundwater conservation district as an alternative source of water; and

(C) all navigation districts within the river basin concerned; and

(3) within 30 days after the date of the newspaper publication of the commission's notice, a public hearing has not been requested in writing by a commissioner, the executive director, or an affected person who objects to the application.

(e) The inadvertent failure of the commission to mail a notice under Subdivision (2), Subsection (d), of this section to a navigation district that is not a claimant or appropriator of water does not prevent the commission's consideration of the application.

(f) If, on the date specified in the notice prescribed by Subsection (c) of this section, the commission determines that a public hearing must be held, the matter shall be remanded for hearing without the necessity of issuing further notice other than advising all parties of the time and place where the hearing is to convene.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept.

1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 3.004, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 4, eff. June 19, 1987.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1157 (S.B. 864), Sec. 1, eff. September 1, 2017.

Sec. 11.133. HEARING. At the time and place stated in the notice, the commission shall hold a hearing on the application. Any person may appear at the hearing in person or by attorney or may enter his appearance in writing. Any person who appears may present objection to the issuance of the permit. The commission may receive evidence, orally or by affidavit, in support of or in opposition to the issuance of the permit, and it may hear arguments.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.134. ACTION ON APPLICATION. (a) After the hearing, the commission shall make a written decision granting or denying the application. The application may be granted or denied in whole or in part.

(b) The commission shall grant the application only if:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fee;

(2) unappropriated water is available in the source of supply;

(3) the proposed appropriation:

(A) is intended for a beneficial use;

(B) does not impair existing water rights or vested riparian rights;

(C) is not detrimental to the public welfare;

(D) considers any applicable environmental flow standards established under Section 11.1471 and, if applicable, the assessments performed under Sections 11.147(d) and (e) and Sections 11.150, 11.151, and 11.152; and

(E) addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan for any area in which the proposed appropriation

is located, unless the commission determines that conditions warrant waiver of this requirement; and

(4) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by Section 11.002(8)(B).

(b-1) In determining whether an appropriation is detrimental to the public welfare under Subsection (b)(3)(C), the commission may consider only the factors that are within the jurisdiction and expertise of the commission as established by this chapter.

(c) Beginning January 5, 2002, the commission may not issue a water right for municipal purposes in a region that does not have an approved regional water plan in accordance with Section 16.053(i) unless the commission determines that conditions warrant waiver of this requirement.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 1.09; Acts 1997, 75th Leg., ch. 1010, Sec. 4.01, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1223, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.08, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.12, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.12, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 5, eff. September 1, 2017.

Sec. 11.135. ISSUANCE OF PERMIT. (a) On approval of an application, the commission shall issue a permit to the applicant. The applicant's right to take and use water is limited to the extent and purposes stated in the permit.

(b) The permit shall be in writing and attested by the seal of the commission, and it shall contain substantially the following information:

(1) the name of the person to whom the permit is issued;

(2) the date the permit is issued;

(3) the date the original application was filed;

(4) the use or purpose for which the appropriation is to be

made;

(5) the amount or volume of water authorized to be appropriated for each purpose; if use of the appropriated water is authorized for multiple purposes, the permit shall contain a special condition limiting the total amount of water that may actually be diverted for all of the purposes to the amount of water appropriated;

(6) a general description of the source of supply from which the appropriation is proposed to be made, including any alternative source of water that is not state water;

(7) the time within which construction or work must begin and the time within which it must be completed; and

(8) any other information the commission prescribes.

(c) If the appropriation is for irrigation, the commission shall also place in the permit a description and statement of the approximate area of the land to be irrigated.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.011, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 2.10, eff. June 19, 1997.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1157 (S.B. 864), Sec. 2, eff. September 1, 2017.

Sec. 11.1351. PERMIT RESTRICTIONS. In granting an application, the commission may direct that stream flow restrictions and other conditions and restrictions be placed in the permit being issued to protect the priority of senior water rights.

Added by Acts 1987, 70th Leg., ch. 404, Sec. 1, eff. Sept. 1, 1987.

Sec. 11.136. RECORDING OF PERMIT. (a) The commission shall transmit the permit by registered mail to the county clerk of the county in which the appropriation is to be made.

(b) When the county clerk receives the permit and is paid the recording fee (as prescribed by Subchapter B, Chapter 118, Local Government Code, he shall file and record the permit in a well-bound book kept for that purpose. He shall index the permit alphabetically in the name of the applicant and of the stream or source of water supply. After he has recorded the permit, the county clerk shall

deliver the permit, on demand, to the applicant.

(c) When the permit is filed in the office of the county clerk, it is constructive notice of:

(1) the filing of the application;

(2) the issuance of the permit; and

(3) all the rights arising under the filing of the application and the issuance of the permit.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 149, Sec. 45, eff. Sept. 1, 1987.

Sec. 11.137. SEASONAL PERMITS. (a) The commission may issue seasonal permits in the same manner that it issues regular permits. The provisions of this chapter governing issuance of regular permits apply to issuance of seasonal permits.

(b) The right to take, use, or divert water under seasonal permit is limited to the portion or portions of the calendar year stated in the permit.

(c) In a seasonal permit, the commission shall specify the conditions necessary to fully protect prior appropriations or vested rights on the stream.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.138. TEMPORARY PERMITS. (a) The commission may issue temporary permits for beneficial purposes to the extent that they do not interfere with or adversely affect prior appropriations or vested rights on the stream from which water is to be diverted under such temporary permit. The commission may, by appropriate order, authorize any member of the commission to approve and issue temporary permits without notice and hearing if it appears to such issuing party that sufficient water is available at the proposed point of diversion to satisfy the requirements of the temporary permit as well as all existing rights. No temporary permit issued without notice and hearing shall authorize more than 10 acre-feet of water, nor may it be for a term in excess of one year.

(b) The commission may prescribe rules governing notice and procedure for the issuance of temporary permits.

(c) As between temporary permits, the one applied for first has priority.

(d) The commission may not issue a temporary permit for a period exceeding three calendar years.

(e) A temporary permit does not vest in its holder a permanent right to the use of water.

(f) A temporary permit expires and shall be cancelled by the commission in accordance with the terms of the permit.

(g) The commission may prescribe by rule the fees to be paid for issuance of temporary permits, but no fee for issuance or extension of a temporary permit shall exceed $500.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 978, ch. 367, Sec. 5, 42, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.012, eff. Sept. 1, 1985.

Sec. 11.1381. TERM PERMITS. (a) Until a water right is perfected to the full extent provided by Section 11.026 of this code, the commission may issue permits for a term of years for use of state water to which a senior water right has not been perfected.

(b) The commission shall refuse to grant an application for a permit under this section if the commission finds that there is a substantial likelihood that the issuance of the permit will jeopardize financial commitments made for water projects that have been built or that are being built to optimally develop the water resources of the area.

(c) The commission shall refuse to grant an application for a term permit if the holder of the senior appropriative water right can demonstrate that the issuance of the term permit would prohibit the senior appropriative water right holder from beneficially using the senior rights during the term of the term permit. Such demonstration will be made using reasonable projections based on accepted methods.

(d) A permit issued under this section is subordinate to any senior appropriative water rights.

Added by Acts 1987, 70th Leg., ch. 405, Sec. 1, eff. Sept. 1, 1987.

Sec. 11.139. EMERGENCY AUTHORIZATIONS. (a) Except as provided

by Section 11.148 of this code, the commission may grant an emergency permit, order, or amendment to an existing permit, certified filing, or certificate of adjudication after notice to the governor for an initial period of not more than 120 days if the commission finds that emergency conditions exist which present an imminent threat to the public health and safety and which override the necessity to comply with established statutory procedures and there are no feasible practicable alternatives to the emergency authorization. Such emergency action may be renewed once for not longer than 60 days.

(b) A person desiring to obtain an emergency authorization under this section shall submit to the commission a sworn application containing the following information:

(1) a description of the condition of emergency justifying the granting of the emergency authorization;

(2) a statement setting forth facts which support the findings required under this section;

(3) an estimate of the dates on which the proposed authorization should begin and end;

(4) a description of the action sought and the activity proposed to be allowed, mandated, or prohibited; and

(5) any other statements or information required by the commission.

(c) If the commission finds the applicant's statement made under Subsection (b) of this section to be correct, the commission may grant emergency authorizations under this section without notice and hearing or with such notice and hearing as the commission considers practicable under the circumstances.

(d) If the commission grants an emergency authorization under this section without a hearing, the authorization shall fix a time and place for a hearing to be held before the commission. The hearing shall be held as soon after the emergency authorization is granted as is practicable but not later than 20 days after the emergency authorization is granted.

(e) At the hearing, the commission shall affirm, modify, or set aside the emergency authorization. Any hearing on an emergency authorization shall be conducted in accordance with Chapter 2001, Government Code, and rules of the commission.

(f) If an imminent threat to the public health and safety exists which requires emergency action before the commission can take action as provided by Subsections (a) through (c) of this section and

there are no feasible alternatives, the executive director may grant an emergency authorization after notice to the governor. If the executive director issues an emergency authorization under this subsection, the commission shall hold a hearing as provided for in Subsections (d) and (e) of this section. The requirements of Subsection (b) of this section shall be satisfied by the applicant before action is taken by the executive director on the request for emergency authorization.

(g) The requirements of Section 11.132 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held on an application for an emergency authorization under this section, but such general notice of the hearing shall be given as the commission, under Subsections (c) and (e) of this section, considers practicable under the circumstances.

(h) The commission may grant an emergency authorization under this section for the temporary transfer and use of all or part of a permit, certified filing, or certificate of adjudication for other than domestic or municipal use to a retail or wholesale water supplier for public health and safety purposes. In addition to the requirements contained in Subsection (b) of this section, the commission may direct that the applicant will timely pay the amounts for which the applicant may be potentially liable under Subsection (j) of this section and to the extent authorized by law will fully indemnify and hold harmless the state, the executive director, and the commission from any and all liability for the authorization sought. The commission may order bond or other surety in a form acceptable to the commission as a condition for such emergency authorization. The commission may not grant an emergency authorization under this section which would cause a violation of a federal regulation.

(i) In transferring the amount of water requested by the applicant, the executive director or the commission shall allocate the requested amount among two or more permits, certified filings, or certificates of adjudication for other than domestic or municipal use.

(j) The person granted an emergency authorization under Subsection (h) of this section is liable to the owner and the owner's agent or lessee from whom the use is transferred for the fair market value of the water transferred as well as for any damages caused by

the transfer of use. If, within 60 days of the termination of the authorization, the parties do not agree on the amount due, or if full payment is not made, either party may file a complaint with the commission to determine the amount due. The commission may use dispute resolution procedures for a complaint filed under this subsection. After exhausting all administrative remedies under this subsection, an owner from whom the use is transferred may file suit to recover or determine the amount due in a district court in the county where the owner resides or has its headquarters. The prevailing party in a suit filed under this subsection is entitled to recover court costs and reasonable attorney's fees.

(k) The commission may prescribe rules and adopt fees which are necessary to carry out the provisions of this section.

(l) An emergency authorization does not vest in the grantee any right to the diversion, impoundment, or use of water and shall expire and be cancelled in accordance with its terms.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.013, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 3.03, eff. June 19, 1997.

Sec. 11.140. PERMITS FOR STORAGE FOR PROJECT DEVELOPMENT. The commission may issue permits for storage solely for the purpose of optimum development of projects. The commission may convert these permits to permits for beneficial use if application to have them converted is made to the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.1405. DESALINATION OF SEAWATER FOR USE FOR INDUSTRIAL PURPOSES. (a) The commission may issue a permit under this section to authorize a diversion of state water from the Gulf of Mexico or a bay or arm of the Gulf of Mexico for desalination and use for industrial purposes if:

(1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or

(2) the seawater contains a total dissolved solids concentration based on a yearly average of samples taken monthly at

the water source of less than 20,000 milligrams per liter.

(b) A person may divert state water from the Gulf of Mexico or a bay or arm of the Gulf of Mexico for desalination and use for industrial purposes without obtaining a permit if Subsection (a) does not apply.

(c) A person who diverts and uses state water that consists of marine seawater under a permit issued under Subsection (a) or as authorized by Subsection (b) must determine the total dissolved solids concentration of the seawater at the water source by monthly sampling and analysis and provide the data collected to the commission. A person may not begin construction of a facility for the diversion of marine seawater for the purposes provided by this section without obtaining a permit until the person has provided data to the commission based on the analysis of samples taken at the water source over a period of at least one year demonstrating that Subsection (a)(2) does not apply. A person who has begun construction of a facility for the diversion of marine seawater for the purposes provided by this section without obtaining a permit because the person has demonstrated that Subsection (a)(2) does not apply is not required to obtain a permit for the facility if the total dissolved solids concentration of the seawater at the water source subsequently changes so that Subsection (a)(2) applies.

(d) A permit application under this section must be submitted as required by commission rule.

(e) The commission is not required to make a finding of water availability for an application under this section.

(f) The commission shall evaluate whether any proposed diversion under this section is consistent with any applicable environmental flow standards established under Section 11.1471.

(g) The commission may include any provision in a permit issued under this section that the commission considers necessary to comply with the environmental flow standards established under Section 11.1471.

(h) The commission shall adopt rules providing an expedited procedure for acting on an application for a permit under Subsection (a). The rules must provide for notice, an opportunity for the submission of written comment, and an opportunity for a contested case hearing regarding commission actions relating to an application for a permit.

Added by Acts 2015, 84th Leg., R.S., Ch. 829 (H.B. 4097), Sec. 4, eff. June 17, 2015.

Sec. 11.141. DATE OF PRIORITY. When the commission issues a permit, the priority of the appropriation of water and the claimant's right to use the water date from the date of filing of the application.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.142. PERMIT EXEMPTIONS. (a) Without obtaining a permit, a person may construct on the person's own property a dam or reservoir with normal storage of not more than 200 acre-feet of water for domestic and livestock purposes. A person who temporarily stores more than 200 acre-feet of water in a dam or reservoir described by this subsection is not required to obtain a permit for the dam or reservoir if the person can demonstrate that the person has not stored in the dam or reservoir more than 200 acre-feet of water on average in any 12-month period. This exemption does not apply to a commercial operation.

Text of subsec. (b) as amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.09

(b) Without obtaining a permit, a person may construct on the person's property a dam or reservoir with normal storage of not more than 200 acre-feet of water for fish and wildlife purposes if the property on which the dam or reservoir will be constructed is qualified open-space land, as defined by Section 23.51, Tax Code. This exemption does not apply to a commercial operation.

Text of subsec. (b) as amended by Acts 2001, 77th Leg., ch. 1427, Sec. 1

(b) Without obtaining a permit, a person may construct on the person's property in an unincorporated area a dam or reservoir with normal storage of not more than 200 acre-feet of water for commercial or noncommercial wildlife management, including fishing, but not including fish farming.

(c) Without obtaining a permit, a person who is drilling and producing petroleum and conducting operations associated with

drilling and producing petroleum may take for those purposes state water from the Gulf of Mexico and adjacent bays and arms of the Gulf of Mexico in an amount not to exceed one acre-foot during each 24-hour period.

(d) Without obtaining a permit, a person may construct or maintain a reservoir as part of a surface coal mining operation under Chapter 134, Natural Resources Code, if the water in the reservoir is used solely for:

(1) sediment control; or

(2) compliance with applicable laws, rules, or regulations relating to fire or dust suppression.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 718, Sec. 1, eff. June 14, 1985; Acts 1995, 74th Leg., ch. 335, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 2.11, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.09, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1427, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 63 (S.B. 1711), Sec. 1, eff. May 19, 2009.

Sec. 11.1421. PERMIT EXEMPTION FOR MARICULTURE ACTIVITIES. (a) In this section, "mariculture" means the propagation and rearing of aquatic species, including shrimp, other crustaceans, finfish, mollusks, and other similar creatures in a controlled environment using brackish or marine water.

(b) Without obtaining a permit and subject to the requirements and limitations provided by Subsections (c) through (e) of this section, a person who is engaged in mariculture operations on land may take for that purpose state water from the Gulf of Mexico and adjacent bays and arms of the Gulf of Mexico in an amount appropriate to those mariculture activities.

(c) Before a person first takes water under Subsection (b) of this section, the person must give notice to the commission of the proposed appropriation.

(d) Each appropriation of water made under Subsection (b) of this section shall be reported to the commission in the manner provided by the commission's rules.

(e) After notice and hearing, if the commission determines that as a result of low freshwater inflows appropriation of water under Subsection (b) of this section would interfere with natural productivity of bays and estuaries, the commission shall issue an order requiring interruption or reduction of the appropriation.

Added by Acts 1987, 70th Leg., ch. 544, Sec. 2, eff. Aug. 31, 1987.

Sec. 11.1422. PERMIT EXEMPTION FOR HISTORIC CEMETERIES. (a) Without obtaining a permit, a tax-exempt nonprofit corporation that owns a cemetery may divert from a river not more than 200 acre-feet of water each year to irrigate the grounds of the cemetery if the cemetery:

(1) borders the river; and

(2) is more than 100 years old.

(b) The executive director or a watermaster who has jurisdiction over the river from which a cemetery diverts water under this section by order may restrict a diversion authorized by this section if the executive director or watermaster determines the diversion will harm a person downstream of the cemetery who acquired a water right before the date this section took effect. The executive director or watermaster shall limit the restriction to the extent of the harm and to the period of the harm.

Added by Acts 1995, 74th Leg., ch. 183, Sec. 2, eff. May 23, 1995.

Sec. 11.143. USE OF WATER FROM EXEMPT DAM OR RESERVOIR FOR NONEXEMPT PURPOSES. (a) The owner of a dam or reservoir exempted under Section 11.142(a) or (b) who desires to use water from the dam or reservoir for a purpose not described by that subsection shall obtain a permit to do so. The owner may obtain a regular permit, a seasonal permit, or a permit for a term of years. The owner may elect to obtain the permit by proceeding under this section or under the other provisions of this chapter governing issuance of permits.

(b) If the applicant elects to proceed under this section, he shall submit to the commission a sworn application, on a form furnished by the commission, containing the following information:

(1) the name and post-office address of the applicant;

(2) the nature and purpose of the use and the amount of

water to be used annually for each purpose;

(3) the major watershed and the tributary (named or unnamed) on which the dam or reservoir is located;

(4) the county in which the dam or reservoir is located;

(5) the approximate distance and direction from the county seat of the county to the location of the dam or reservoir;

(6) the survey or the portion of the survey on which the dam or reservoir is located and, to the best of the applicant's knowledge and belief, the distance and direction of the midpoint of the dam or reservoir from a corner of the survey, which information the executive director may require to be marked on an aerial photograph or map furnished by the commission;

(7) the approximate surface area, to the nearest acre, of the reservoir when it is full and the average depth in feet when it is full; and

(8) the approximate number of square miles in the drainage area above the dam or reservoir.

(c) If the permit is sought for irrigation, the application must also specify:

(1) the total number of irrigable acres in the area;

(2) the number of acres to be irrigated within the area in any one year; and

(3) the approximate distance and direction of the land to be irrigated from the midpoint of the dam or reservoir.

(d) Except as otherwise specifically provided by this subsection, before the commission may approve the application and issue the permit, it shall give notice and hold a hearing as prescribed by this section. The commission may act on the application without holding a public hearing if:

(1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located;

(2) not less than 30 days before the date of action on the application by the commission, the commission mails a copy of the notice by first-class mail, postage prepaid, to each person whose claim or appropriation has been filed with the commission and whose diversion point is downstream from that described in the application; and

(3) within 30 days after the date of the newspaper publication of the commission's notice, a public hearing is not requested in writing by a commissioner, the executive director, or an affected person who objects to the application.

(e) In the notice, the commission shall:

(1) state the name and post-office address of the applicant;

(2) state the date the application was filed;

(3) state the purpose and extent of the proposed appropriation of water;

(4) identify the source of supply, including any proposed alternative source of water, other than state water, identified by the applicant, and the place where the water is stored; and

(5) specify the time and place of the hearing.

(f) The notice shall be published only once, at least 20 days before the date stated in the notice for the hearing on the application, in a newspaper having general circulation in the county where the dam or reservoir is located. At least 15 days before the date set for the hearing, the commission shall transmit a copy of the notice by first-class mail to each person whose claim or appropriation has been filed with the commission and whose diversion point is downstream from that described in the application. If the notice identifies groundwater from a well located in a groundwater conservation district as a proposed alternative source of water, the notice shall be:

(1) sent to the groundwater conservation district in which the well is located; and

(2) published, at least 20 days before the date stated in the notice for the hearing, in a newspaper having general circulation in each county in which the groundwater district is located.

(g) If on the date specified in the notice prescribed by Subsection (d) of this section, the commission determines that a public hearing must be held, the matter shall be remanded for hearing without the necessity of issuing further notice other than advising all parties of the time and place where the hearing is to convene.

(h) The applicant shall pay the filing fee prescribed by Section 5.701(c) at the time he files the application.

(i) The commission shall approve the application and issue the permit as applied for in whole or part if it determines that:

(1) there is unappropriated water in the source of supply;

(2) the applicant has met the requirements of this section;
(3) the water is to be used for a beneficial purpose;
(4) the proposed use is not detrimental to the public welfare or to the welfare of the locality; and
(5) the proposed use will not impair existing water rights.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.014, 3.003, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 5, eff. June 19, 1987; Acts 2001, 77th Leg., ch. 1427, Sec. 2, 3, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 26.002, eff. September 1, 2011.
Acts 2017, 85th Leg., R.S., Ch. 1157 (S.B. 864), Sec. 3, eff. September 1, 2017.

Sec. 11.144. APPROVAL FOR ALTERATIONS. All holders of permits and certified filings shall obtain the approval of the commission before making any alterations, enlargements, extensions, or other changes to any reservoir, dam, main canal, or diversion work on which a permit has been granted or a certified filing recorded. A detailed statement and plans for alterations or changes shall be filed with the commission and approved by the executive director before the alterations or changes are made. This section does not apply to the ordinary maintenance or emergency repair of the facility.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.015, eff. Sept. 1, 1985.

Sec. 11.145. WHEN CONSTRUCTION MUST BEGIN. (a) If a permit is for appropriation by direct diversion, construction of the proposed facilities shall begin within the time fixed by the commission, which shall not exceed two years after the date the permit is issued. The appropriator shall work diligently and continuously to the completion of the construction. The commission may, by entering an order of record, extend the time for beginning construction. The commission may establish fees, not to exceed $1,000, for extending the time to

begin construction of the proposed facilities.

(b) If the permit contemplates construction of a storage reservoir, construction shall begin within the time fixed by the commission, not to exceed two years after the date the permit is issued. The commission, by entering an order of record, may extend the time for beginning construction. The commission may fix fees, not to exceed $1,000, for extending the time to begin construction of reservoirs.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3155, ch. 828, Sec. 3, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.015, eff. Sept. 1, 1985.

Sec. 11.146. FORFEITURES AND CANCELLATION OF PERMIT FOR INACTION. (a) If a permittee fails to begin construction within the time specified in Section 11.145 of this code, he forfeits all rights to the permit, subject to notice and hearing as prescribed by this section.

(b) After beginning construction if the appropriator fails to work diligently and continuously to the completion of the work, the appropriation is subject to cancellation in whole or part, subject to notice and hearing as prescribed by this section.

(c) If the commission believes that an appropriation or permit should be declared forfeited under this section or any other sections of this code, it should give the appropriator or permittee 30 days notice and provide him with an opportunity to be heard.

(d) After the hearing, the commission by entering an order of record may cancel the appropriation in whole or part. The commission shall immediately transmit a certified copy of the cancellation order by certified mail to the county clerk of the county in which the permit is recorded. The county clerk shall record the cancellation order.

(e) Except as provided by Section 11.1381 of this code, if a permit has been issued for the use of water, the water is not subject to a new appropriation until the permit has been cancelled in whole or part as provided by this section.

(f) Except as provided by Subchapter E of this chapter, none of the provisions of this code may be construed as intended to impair,

cause, or authorize or may impair, cause, or authorize the forfeiture of any rights acquired by any declaration of appropriation or by any permit if the appropriator has begun or begins the work and development contemplated by his declaration of appropriation or permit within the time provided by the law under which the declaration of appropriation was made or the permit was granted and has prosecuted or continues to prosecute it with all reasonable diligence toward completion.

(g) This section does not apply to a permit for construction of a reservoir designed for the storage of more than 50,000 acre-feet of water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 405, Sec. 2, eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 966, Sec. 2.10, eff. Sept. 1, 2001.

Sec. 11.147. EFFECTS OF PERMIT ON BAYS AND ESTUARIES AND INSTREAM USES. (a) In this section, "beneficial inflows" means a salinity, nutrient, and sediment loading regime adequate to maintain an ecologically sound environment in the receiving bay and estuary system that is necessary for the maintenance of productivity of economically important and ecologically characteristic sport or commercial fish and shellfish species and estuarine life upon which such fish and shellfish are dependent.

(b) In its consideration of an application for a permit to store, take, or divert water, the commission shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the commission shall include in the permit any conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system, to the extent practicable when considering all public interests and the studies mandated by Section 16.058 as evaluated under Section 11.1491.

(c) For the purposes of making a determination under Subsection (b) of this section, the commission shall consider among other factors:

(1) the need for periodic freshwater inflows to supply nutrients and modify salinity to preserve the sound environment of

the bay or estuary, using any available information, including studies and plans specified in Section 11.1491 of this code and other studies considered by the commission to be reliable; together with existing circumstances, natural or otherwise, that might prevent the conditions imposed from producing benefits;

(2) the ecology and productivity of the affected bay and estuary system;

(3) the expected effects on the public welfare of not including in the permit some or all of the conditions considered necessary to maintain the beneficial inflows to the affected bay or estuary system;

(4) the quantity of water requested and the proposed use of water by the applicant, as well as the needs of those who would be served by the applicant;

(5) the expected effects on the public welfare of the failure to issue all or part of the permit being considered; and

(6) for purposes of this section, the declarations as to preferences for competing uses of water as found in Sections 11.024 and 11.033, Water Code, as well as the public policy statement in Section 1.003, Water Code.

(d) In its consideration of an application to store, take, or divert water, the commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain existing instream uses and water quality of the stream or river to which the application applies. In determining what conditions to include in the permit under this subsection, the commission shall consider among other factors:

(1) the studies mandated by Section 16.059; and

(2) any water quality assessment performed under Section 11.150.

(e) The commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain fish and wildlife habitats. In determining what conditions to include in the permit under this subsection, the commission shall consider any assessment performed under Section 11.152.

(e-1) Any permit for a new appropriation of water or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted must include a

provision allowing the commission to adjust the conditions included in the permit or amended water right to provide for protection of instream flows or freshwater inflows. With respect to an amended water right, the provision may not allow the commission to adjust a condition of the amendment other than a condition that applies only to the increase in the amount of water to be stored, taken, or diverted authorized by the amendment. This subsection does not affect an appropriation of or an authorization to store, take, or divert water under a permit or amendment to a water right issued before September 1, 2007. The commission shall adjust the conditions if the commission determines, through an expedited public comment process, that such an adjustment is appropriate to achieve compliance with applicable environmental flow standards adopted under Section 11.1471. The adjustment:

(1) in combination with any previous adjustments made under this subsection may not increase the amount of the pass-through or release requirement for the protection of instream flows or freshwater inflows by more than 12.5 percent of the annualized total of that requirement contained in the permit as issued or of that requirement contained in the amended water right and applicable only to the increase in the amount of water authorized to be stored, taken, or diverted under the amended water right;

(2) must be based on appropriate consideration of the priority dates and diversion locations of any other water rights granted in the same river basin that are subject to adjustment under this subsection; and

(3) must be based on appropriate consideration of any voluntary contributions to the Texas Water Trust, and of any voluntary amendments to existing water rights to change the use of a specified quantity of water to or add a use of a specified quantity of water for instream flows dedicated to environmental needs or bay and estuary inflows as authorized by Section 11.0237(a), that actually contribute toward meeting the applicable environmental flow standards.

(e-2) Any water right holder who makes a contribution or amends a water right as described by Subsection (e-1)(3) is entitled to appropriate credit for the benefits of the contribution or amendment against the adjustment of the holder's water right under Subsection (e-1).

(e-3) Notwithstanding Subsections (b)-(e), for the purpose of

determining the environmental flow conditions necessary to maintain freshwater inflows to an affected bay and estuary system, existing instream uses and water quality of a stream or river, or fish and aquatic wildlife habitats, the commission shall apply any applicable environmental flow standard, including any environmental flow set-aside, adopted under Section 11.1471 instead of considering the factors specified by those subsections.

(f) On receipt of an application for a permit to store, take, or divert water, the commission shall send a copy of the permit application and any subsequent amendments to the Parks and Wildlife Department. At its option, the Parks and Wildlife Department may be a party in hearings on applications for permits to store, take, or divert water. In making a final decision on any application for a permit, the commission, in addition to other information, evidence, and testimony presented, shall consider all information, evidence, and testimony presented by the Parks and Wildlife Department and the board.

(g) The failure of the Parks and Wildlife Department to appear as a party does not relieve the commission of the requirements of this section.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 4.01; Acts 1987, 70th Leg., ch. 419, Sec. 3, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 977, Sec. 5, eff. June 19, 1987; Acts 2001, 77th Leg., ch. 966, Sec. 2.11, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1242, Sec. 3, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.13, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.13, eff. September 1, 2007.

Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES. (a) The commission by rule shall:

(1) adopt appropriate environmental flow standards for each river basin and bay system in this state that are adequate to support a sound ecological environment, to the maximum extent reasonable considering other public interests and other relevant factors;

(2) establish an amount of unappropriated water, if available, to be set aside to satisfy the environmental flow standards to the maximum extent reasonable when considering human water needs; and

(3) establish procedures for implementing an adjustment of the conditions included in a permit or an amended water right as provided by Sections 11.147(e-1) and (e-2).

(b) In adopting environmental flow standards for a river basin and bay system under Subsection (a)(1), the commission shall consider:

(1) the definition of the geographical extent of the river basin and bay system adopted by the advisory group under Section 11.02362(a) and the definition and designation of the river basin by the board under Section 16.051(c);

(2) the schedule established by the advisory group under Section 11.02362(d) or (e) for the adoption of environmental flow standards for the river basin and bay system, if applicable;

(3) the environmental flow analyses and the recommended environmental flow regime developed by the applicable basin and bay expert science team under Section 11.02362(m);

(4) the recommendations developed by the applicable basin and bay area stakeholders committee under Section 11.02362(o) regarding environmental flow standards and strategies to meet the flow standards;

(5) any comments submitted by the advisory group to the commission under Section 11.02362(q);

(6) the specific characteristics of the river basin and bay system;

(7) economic factors;

(8) the human and other competing water needs in the river basin and bay system;

(9) all reasonably available scientific information, including any scientific information provided by the science advisory committee; and

(10) any other appropriate information.

(c) Environmental flow standards adopted under Subsection (a)(1) must consist of a schedule of flow quantities, reflecting seasonal and yearly fluctuations that may vary geographically by specific location in a river basin and bay system.

(d) As provided by Section 11.023, the commission may not issue

a permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted if the issuance of the permit or amendment would impair an environmental flow set-aside established under Subsection (a)(2). A permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted that is issued after the adoption of an applicable environmental flow set-aside must contain appropriate conditions to ensure protection of the environmental flow set-aside.

(e) An environmental flow set-aside established under Subsection (a)(2) for a river basin and bay system other than the middle and lower Rio Grande must be assigned a priority date corresponding to the date the commission receives environmental flow regime recommendations from the applicable basin and bay expert science team and be included in the appropriate water availability models in connection with an application for a permit for a new appropriation or for an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted.

(f) An environmental flow standard or environmental flow set-aside adopted under Subsection (a) may be altered by the commission in a rulemaking process undertaken in accordance with a schedule established by the commission. In establishing a schedule, the commission shall consider the applicable work plan approved by the advisory group under Section 11.02362(p). The commission's schedule may not provide for the rulemaking process to occur more frequently than once every 10 years unless the work plan provides for a periodic review under Section 11.02362(p) to occur more frequently than once every 10 years. In that event, the commission may provide for the rulemaking process to be undertaken in conjunction with the periodic review if the commission determines that schedule to be appropriate. A rulemaking process undertaken under this subsection must provide for the participation of stakeholders having interests in the particular river basin and bay system for which the process is undertaken.

Added by Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.14, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.14, eff. September 1, 2007.

Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR ENVIRONMENTAL FLOWS. (a) Permit conditions relating to beneficial inflows to affected bays and estuaries and instream uses may be suspended by the commission if the commission finds that an emergency exists and cannot practically be resolved in other ways.

(a-1) State water that is set aside by the commission to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471(a)(2) may be made available temporarily for other essential beneficial uses if the commission finds that an emergency exists that cannot practically be resolved in another way.

(b) Before the commission suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1), it must give written notice to the Parks and Wildlife Department of the proposed action. The commission shall give the Parks and Wildlife Department an opportunity to submit comments on the proposed action within 72 hours from such time and the commission shall consider those comments before issuing its order implementing the proposed action.

(c) The commission may suspend the permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice to any other interested party other than the Parks and Wildlife Department as provided by Subsection (b). However, all affected persons shall be notified immediately by publication, and a hearing to determine whether the suspension should be continued shall be held within 15 days of the date on which the order to suspend is issued.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 4.02.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.15, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.16, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.15, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.16, eff.

September 1, 2007.

Sec. 11.1491. EVALUATION OF BAYS AND ESTUARIES DATA. (a) The Parks and Wildlife Department and the commission shall have joint responsibility to review the studies prepared under Section 16.058, to determine inflow conditions necessary for the bays and estuaries, and to provide information necessary for water resources management. Each agency shall designate an employee to share equally in the oversight of the program. Other responsibilities shall be divided between the Parks and Wildlife Department and the commission to maximize present in-house capabilities of personnel and to minimize costs to the state. Each agency shall have reasonable access to all information produced by the other agency. Publication of reports completed under this section shall be submitted for comment to the commission, the Parks and Wildlife Department, the advisory group, the science advisory committee, and any applicable basin and bay area stakeholders committee and basin and bay expert science team.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1351, Sec. 1.25, eff. September 1, 2007.

(c) The board may authorize the use of money from the research and planning fund established by Chapter 15 of this code to accomplish the purposes of this section. These funds shall be used by the commission in cooperation with the Parks and Wildlife Department for interagency contracts with cooperating agencies and universities, and contracts with private sector establishments, as necessary, to accomplish the purposes of this section.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 4.02. Renumbered from Sec. 11.149 and amended by Acts 1987, 70th Leg., ch. 419, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.17, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.25, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.17, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.25, eff. September 1, 2007.

Sec. 11.150. EFFECTS OF PERMITS ON WATER QUALITY. In consideration of an application for a permit under this subchapter, the commission shall assess the effects, if any, of the issuance of the permit on water quality in this state.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.001, eff. Sept. 1, 1985.

Sec. 11.1501. CONSIDERATION AND REVISION OF PLANS. In considering an application for a permit to store, take, or divert surface water, or for an amendment to a permit, certified filing, or certificate of adjudication, the commission shall consider the state water plan and any approved regional water plan for the area or areas in which the water is proposed to be stored, diverted, or used.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.02, eff. Sept. 1, 1997.

Sec. 11.151. EFFECTS OF PERMITS ON GROUNDWATER. In considering an application for a permit to store, take, or divert surface water, the commission shall consider the effects, if any, on groundwater or groundwater recharge.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.02, eff. Sept. 1, 1997.

Sec. 11.152. ASSESSMENT OF EFFECTS OF PERMITS ON FISH AND WILDLIFE HABITATS. In its consideration of an application for a permit to store, take, or divert water in excess of 5,000 acre feet per year, the commission shall assess the effects, if any, on the issuance of the permit on fish and wildlife habitats and may require the applicant to take reasonable actions to mitigate adverse impacts on such habitat. In determining whether to require an applicant to mitigate adverse impacts on a habitat, the commission may consider any net benefit to the habitat produced by the project. The commission shall offset against any mitigation required by the U.S.

Fish and Wildlife Service pursuant to 33 C.F.R. Parts 320-330 any mitigation authorized by this section.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.001, eff. Sept. 1, 1985. Renumbered from Sec. 11.149 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(56), eff. Sept. 1, 1987.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 24.002, eff. September 1, 2009.

Sec. 11.153. PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. (a) In this section, "aquifer storage and recovery project" has the meaning assigned by Section 27.151.

(b) A water right holder or a person who has contracted for the use of water under a contract that does not prohibit the use of the water in an aquifer storage and recovery project may undertake an aquifer storage and recovery project without obtaining any additional authorization under this chapter for the project. A person described by this subsection undertaking an aquifer storage and recovery project must:

(1) obtain any required authorizations under Subchapter G, Chapter 27, and Subchapter N, Chapter 36; and

(2) comply with the terms of the applicable water right.

(c) This section does not preclude the commission from considering an aquifer storage and recovery project to be a component of a project permitted under this chapter that is not required to be based on the continuous availability of historic, normal stream flow.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 505 , Sec. 5(1), eff. June 16, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 505 , Sec. 5(1), eff. June 16, 2015.

Added by Acts 1995, 74th Leg., ch. 309, Sec. 2, eff. June 5, 1995.
Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.03, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 1, eff. June 16, 2015.
Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 5(1), eff. June 16, 2015.

Sec. 11.155. AQUIFER STORAGE AND RECOVERY AND AQUIFER RECHARGE REPORTS. (a) In this section:

(1) "Aquifer recharge project" means a project involving the intentional recharge of an aquifer by means of an injection well authorized under Chapter 27 or other means of infiltration, including actions designed to:

(A) reduce declines in the water level of the aquifer;

(B) supplement the quantity of groundwater available;

(C) improve water quality in an aquifer;

(D) improve spring flows and other interactions between groundwater and surface water; or

(E) mitigate subsidence.

(2) "Aquifer storage and recovery project" has the meaning assigned by Section 27.151.

(b) The board shall make studies, investigations, and surveys of the aquifers in the state to determine the occurrence, quantity, quality, and availability of aquifers in which aquifer storage and recovery projects or aquifer recharge projects are feasible.

(c) The board, working with appropriate interested persons, including river authorities and major water providers and water utilities, regional water planning groups, groundwater conservation districts, and potential public sponsors of aquifer storage and recovery projects or aquifer recharge projects, shall:

(1) conduct studies of aquifer storage and recovery projects and aquifer recharge projects identified in the state water plan or by interested persons; and

(2) report the results of each study conducted under Subdivision (1) to regional water planning groups and interested persons.

(d) This subsection expires January 1, 2021. The board shall:

(1) conduct a statewide survey to identify the relative suitability of various major and minor aquifers for use in aquifer storage and recovery projects or aquifer recharge projects based on consideration of:

(A) hydrogeological characteristics, with a focus on:

(i) storage potential;

(ii) transmissivity;

(iii) infiltration characteristics;

(iv) storativity;
(v) recoverability; and
(vi) water quality;
(B) the frequency, volume, and distance from excess water available for potential storage; and
(C) the current and future water supply needs identified in the state water plan;
(2) prepare a report that includes an overview of the survey conducted under Subdivision (1); and
(3) not later than December 15, 2020, submit the report described by Subdivision (2) to the governor, lieutenant governor, and speaker of the house of representatives.

Added by Acts 1995, 74th Leg., ch. 309, Sec. 2, eff. June 5, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.05, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1057, Sec. 9, eff. June 20, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 2, eff. June 16, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1043 (H.B. 721), Sec. 1, eff. June 14, 2019.

Sec. 11.157. WATER FOR USE AS AQUIFER RECHARGE OR IN AN AQUIFER STORAGE AND RECOVERY PROJECT. (a) Unappropriated water, including storm water and floodwater, may be appropriated for recharge into an aquifer underlying this state, including an aquifer recharge project as defined by Section 27.201. Water appropriated for diversion and a beneficial use may be stored in an aquifer storage and recovery project, as defined by Section 27.151, before the water is recovered for that beneficial use.

(b) The commission may authorize the appropriation of water under Subsection (a) if the commission determines that:
(1) the water is not needed under Section 11.147 or 11.1471(a)(2), as applicable, to meet downstream instream flow needs or freshwater inflow needs;
(2) the appropriation will accomplish a purpose established by Section 11.023; and
(3) the application for the water right or amendment to the water right complies with Subsection (c).

(c) A water right or an amendment to a water right authorizing a new appropriation of water for use under Subsection (a):

(1) must comply with the requirements of Section 11.134;

(2) must include any special conditions the commission considers necessary to implement this section; and

(3) may be for water that is not continuously available.

(d) Before approving an application for a water right or an amendment to a water right for a new appropriation of water in the Rio Grande basin under this section, the commission shall consider the water accounting requirements for any international water sharing treaty, minutes, and agreement applicable to the Rio Grande basin and the effect of the project on the allocation of water by the Rio Grande watermaster in the middle and lower Rio Grande. The commission may not authorize a new appropriation of water that would result in a violation of a treaty or court decision.

(e) An application for a water right or an amendment to a water right under this section is subject to the motion and hearing requirements of this subchapter.

(f) Not later than the 180th day after the date the commission determines that a water right or an amendment to a water right under this section is administratively complete, the commission shall complete a technical review of the application.

(g) The commission shall adopt rules providing for the considerations for determining the frequency that the water must be available before it may be appropriated.

Added by Acts 2019, 86th Leg., R.S., Ch. 742 (H.B. 720), Sec. 2, eff. June 10, 2019.

Sec. 11.158. AMENDMENT TO CONVERT USE FROM RESERVOIR STORAGE TO AQUIFER STORAGE AND RECOVERY. (a) In this section, "aquifer storage and recovery project" has the meaning assigned by Section 27.151.

(b) A holder of a water right that authorizes the storage of water for a beneficial use in a reservoir that has not been constructed may file an application to amend the water right to remove the authorization for storage in a reservoir provided that the water diverted under the right will be stored in an aquifer storage and recovery project authorized under Section 27.153 for later retrieval and use as authorized by the original water right.

(c) An application for an amendment to a water right described by Subsection (b) may request an increase in the amount of water that may be diverted or the rate of diversion on the basis of an evaporation credit that takes into account the amount of water that would have evaporated if the storage reservoir had been constructed.

(d) A holder of a water right authorizing an appropriation of water for storage in a storage reservoir that has lost storage because of sedimentation, as determined by a survey performed by the board, may file an application for an amendment to the water right to change the use or purpose for which the appropriation is to be made from storage by diversion to storage as part of an aquifer storage and recovery project for later retrieval and use as authorized by the original water right in an amount equal to all or part of the amount of water yield lost to sedimentation.

(e) An application for an amendment to a water right described by Subsection (b) is exempt from any notice and hearing requirements of a statute, commission rule, or permit condition and may not be referred to the State Office of Administrative Hearings for a contested case hearing if the requested change will not cause a negative effect on other water rights holders or the environment that is greater than the effect that the original permit would have had were the permit rights exercised to the full extent of the original permit.

(f) An application for an amendment to a water right described by Subsection (c) or (d) is subject to the notice and hearing requirements of this chapter.

(g) If the commission grants an application for an amendment to a water right described by Subsection (c) or (d), the commission shall include in the amendment any special conditions the commission considers necessary to:

(1) protect existing water rights; and

(2) comply with any applicable requirements established under Section 11.147 or 11.1471.

(h) The commission may adopt rules providing an expedited procedure for acting on an application for an amendment to a water right described by Subsection (b) and the procedures to file and act on an application for an amendment to a water right described by Subsection (c) or (d).

Added by Acts 2019, 86th Leg., R.S., Ch. 742 (H.B. 720), Sec. 2, eff.

June 10, 2019.

SUBCHAPTER E. CANCELLATION OF PERMITS, CERTIFIED FILINGS, AND CERTIFICATES OF ADJUDICATION FOR NONUSE

Sec. 11.171. DEFINITIONS. As used in this subchapter:

(1) "Other interested person" means any person other than a record holder who is interested in the permit or certified filing or any person whose direct interest would be served by the cancellation of the permit or certified filing in whole or part.

(2) "Certified filing" means a declaration of appropriation or affidavit that was filed with the State Board of Water Engineers under the provisions of Section 14, Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended.

(3) "Certificate of adjudication" means a certificate issued by the commission under Section 11.323 of this code.

(4) "Permit" means an authorization by the commission granting a person the right to use water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 309, Sec. 1, eff. Sept. 1, 1991.

Sec. 11.172. GENERAL PRINCIPLE. A permit, certified filing, or certificate of adjudication is subject to cancellation in whole or part for 10 years nonuse as provided by this subchapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.173. CANCELLATION IN WHOLE OR IN PART. (a) Except as provided by Subsection (b) of this section, if all or part of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has not been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the permit, certified filing, or certificate of adjudication is subject to cancellation in whole or in part, as provided by this subchapter, to the extent of the 10 years nonuse.

(b) A permit, certified filing, or certificate of adjudication

or a portion of a permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a):

(1) to the extent of the owner's participation in the Conservation Reserve Program authorized by the Food Security Act, Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985) or a similar governmental program;

(2) if a significant portion of the water authorized to be used pursuant to a permit, certified filing, or certificate of adjudication has been used in accordance with a specific recommendation for meeting a water need included in the regional water plan approved pursuant to Section 16.053;

(3) if the permit, certified filing, or certificate of adjudication:

(A) was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan developed by the holder; and

(B) is consistent with projections of future water needs contained in the state water plan;

(4) if the permit, certified filing, or certificate of adjudication was obtained as the result of the construction of a reservoir funded, in whole or in part, by the holder of the permit, certified filing, or certificate of adjudication as part of the holder's long-term water planning; or

(5) to the extent the nonuse resulted from:

(A) the implementation of water conservation measures under a water conservation plan submitted by the holder of the permit, certified filing, or certificate of adjudication as evidenced by implementation reports submitted by the holder;

(B) a suspension, adjustment, or other restriction on the use of the water authorized to be appropriated under the permit, certified filing, or certificate of adjudication imposed under an order issued by the executive director; or

(C) an inability to appropriate the water authorized to be appropriated under the permit, certified filing, or certificate of adjudication due to drought conditions.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1986, 69th Leg., 3rd C.S., ch. 33, Sec. 1, eff. Oct. 15, 1986; Acts 1991, 72nd Leg., ch. 309, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 4.06, eff. Sept. 1, 1997; Acts

2001, 77th Leg., ch. 966, Sec. 2.12, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1044 (H.B. 1225), Sec. 1, eff. June 18, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1020 (H.B. 2615), Sec. 2, eff. September 1, 2013.

Sec. 11.174. COMMISSION MAY INITIATE PROCEEDINGS. When the commission finds that its records do not show that some portion of the water has been used during the past 10 years, the executive director may initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication in whole or in part.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.016, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 309, Sec. 3, eff. Sept. 1, 1991.

Sec. 11.175. NOTICE. (a) At least 45 days before the date of the hearing, the commission shall send notice of the hearing to the holder of the permit, certified filing, or certificate of adjudication being considered for cancellation in whole or in part. Notice shall be sent by certified mail, return receipt requested, to the last address shown by the records of the commission. The commission shall also send notice by regular mail to all other holders of permits, certified filings, certificates of adjudication, and claims of unadjudicated water rights filed pursuant to Section 11.303 of this code in the same watershed.

(b) The commission shall also have the notice of the hearing published once a week for two consecutive weeks, at least 30 days before the date of the hearing, in a newspaper published in each county in which diversion of water from the source of supply was authorized or proposed to be made and in each county in which the water was authorized or proposed to be used, as shown by the records of the commission. If in any such county no newspaper is published, then the notice may be published in a newspaper having general circulation in the county.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept.

1, 1977; Acts 1991, 72nd Leg., ch. 309, Sec. 4, eff. Sept. 1, 1991.

Sec. 11.176. HEARING. (a) Except as provided by Subsection (b) of this section, the commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.

(b) A hearing on the cancellation of a permit, certified filing, or certificate of adjudication as provided by this chapter is unnecessary if the right to such hearing is expressly waived by the affected holder of a permit, certified filing, or certificate of adjudication.

(c) A permit, certified filing, or certificate of adjudication for a term does not vest in the holder of a permit, certified filing, or certificate of adjudication any right to the diversion, impoundment, or use of water for longer than the term of the permit, certified filing, or certificate of adjudication and shall expire and be cancelled in accordance with its terms without further need for notice or hearing.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 309, Sec. 5, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 2.12, eff. Sept. 1, 1997.

Sec. 11.177. COMMISSION FINDING; ACTION. (a) At the conclusion of the hearing, the commission shall cancel the permit, certified filing, or certificate of adjudication in whole or in part to the extent that it finds that:

(1) the water or any portion of the water appropriated under the permit, certified filing, or certificate of adjudication has not been put to an authorized beneficial use during the 10-year period; and

(2) the holder has not used reasonable diligence in applying the water or the unused portion of the water to an authorized beneficial use or is otherwise unjustified in the nonuse.

(b) In determining what constitutes reasonable diligence or a justified nonuse as used in Subsection (a)(2), the commission shall

give consideration to:

(1) whether sufficient water is available in the source of supply to meet all or part of the appropriation during the 10-year period of nonuse;

(2) whether the nonuse is justified by the holder's participation in the federal Conservation Reserve Program or a similar governmental program as provided by Section 11.173(b)(1);

(3) whether the existing or proposed authorized purpose and place of use are consistent with an approved regional water plan as provided by Section 16.053;

(4) whether the permit, certified filing, or certificate of adjudication has been deposited into the Texas Water Bank as provided by Sections 15.7031 and 15.704 or whether it can be shown that the water right or water available under the right is currently being made available for purchase through private marketing efforts; or

(5) whether the permit, certified filing, or certificate of adjudication has been reserved to provide for instream flows or bay and estuary inflows.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 309, Sec. 6, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 2.12, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.13, eff. Sept. 1, 2001.

Sec. 11.183. RESERVOIR. If the holder of a permit, certified filing, or certificate of adjudication has facilities for the storage of water in a reservoir, the commission may allow him to retain the impoundment to the extent of the conservation storage capacity of the reservoir for domestic, livestock, or recreation purposes.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.184. MUNICIPAL CERTIFIED FILING. Regardless of other provisions of this subchapter, no portion of a certified filing held by a city, town, village, or municipal water district, authorizing the use of water for municipal purposes, shall be cancelled if water has been put to use under the certified filing for municipal purposes at any time during the 10-year period immediately preceding the

institution of cancellation proceedings.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.185. EFFECT OF INACTION. Failure to initiate cancellation proceedings under this subchapter does not validate or improve the status of any permit, certified filing, or certificate of adjudication in whole or in part.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.186. SUBSEQUENT PROCEEDINGS ON SAME WATER RIGHT. Once cancellation proceedings have been initiated against a particular permit, certified filing, or certificate of adjudication and a hearing has been held, further cancellation proceedings shall not be initiated against the same permit, certified filing, or certificate of adjudication within the five-year period immediately following the date of the hearing.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. ARTESIAN WELLS

Sec. 11.201. ARTESIAN WELL DEFINED. An artesian well is an artificial water well in which the water, when properly cased, will rise by natural pressure above the first impervious stratum below the surface of the ground.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.202. RIGHT TO DRILL ARTESIAN WELL. (a) Except as provided by this section, a person is entitled to drill an artesian well for domestic purposes or for stock raising without complying with the general provisions of this code regulating the use of water.

(b) The artesian well must be on that person's own land and must be properly and securely cased.

(c) When water is reached containing mineral or other substances injurious to vegetation or agriculture, the artesian well must be securely capped or its flow controlled so as not to injure another person's land or properly plugged so as to prevent the water from rising above the first impervious stratum below the surface of the ground.

(d) Except as provided by Subsection (e) of this section, after September 1, 1991, and before January 1, 1994, a person may not drill and operate a free-flowing artesian well in a sole or principal source aquifer as designated by 40 C.F.R., Part 149, pursuant to Section 1424(e), Safe Drinking Water Act (42 U.S.C. 300h-3(e)) that will result in a flow of more than 5,000 gallons per minute or that is within 1,000 feet of another well if the combined flows would exceed 5,000 gallons per minute.

(e) The commission may grant for a well an exemption from the prohibition provided by Subsection (d) of this section for any beneficial use that does not waste water. The commission by rule may delegate the authority to grant exemptions under this subsection to a local water district.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., 2nd C.S., ch. 4, Sec. 1, eff. Aug. 29, 1991.

Sec. 11.203. ARTESIAN WELL: DRILLING RECORD. A person who drills an artesian well or has one drilled shall keep a complete and accurate record of the depth, thickness, and character of the different strata penetrated and when the well is completed shall transmit a copy of the record to the commission by registered mail.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.017, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1072, Sec. 13, eff. Sept. 1, 1997.

Sec. 11.204. REPORT OF NEW ARTESIAN WELL. Within one year after an artesian well is drilled, the owner or operator shall transmit to the commission a sworn report stating the result of the

drilling operation, the use to which the water will be applied, and the contemplated extent of the use.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.018, eff. Sept. 1, 1985.

Sec. 11.205. WASTING WATER FROM ARTESIAN WELL. Unless the water from an artesian well is used for a purpose and in a manner in which it may be lawfully used on the owner's land, it is waste and unlawful to wilfully cause or knowingly permit the water to run off the owner's land or to percolate through the stratum above which the water is found.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., 2nd C.S., ch. 4, Sec. 2, eff. Aug. 29, 1991; Acts 1997, 75th Leg., ch. 1072, Sec. 14, eff. Sept. 1, 1997.

Sec. 11.206. IMPROPERLY CASED WELL: NUISANCE. An artesian well that is not tightly cased, capped, and furnished with mechanical appliances that readily and effectively prevent water from flowing out of the well and running over the surface of the ground above the well or wasting through the strata through which it passes is a public nuisance and subject to abatement by the executive director.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981.

Sec. 11.207. ANNUAL REPORT. (a) Not later than March 1 of each year, a person who during any part of the preceding calendar year owned or operated an artesian well for any purpose other than domestic use shall file a report to the commission on a form supplied by the commission.

(b) The report shall state:

(1) the quantity of water which was obtained from the well;

(2) the nature of the uses to which the water was applied;

(3) the change in the level of the well's water table; and

(4) other information required by the commission.

(c) If water from the well was used for irrigation, the report shall also state the acreage and yield of each crop irrigated.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.019, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 6, eff. June 19, 1987.

SUBCHAPTER G. WATER RIGHTS ADJUDICATION ACT

Sec. 11.301. SHORT TITLE. This subchapter may be cited as the Water Rights Adjudication Act.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.302. DECLARATION OF POLICY. The conservation and best utilization of the water resources of this state are a public necessity, and it is in the interest of the people of the state to require recordation with the commission of claims of water rights which are presently unrecorded, to limit the exercise of these claims to actual use, and to provide for the adjudication and administration of water rights to the end that the surface-water resources of the state may be put to their greatest beneficial use. Therefore, this subchapter is in furtherance of the public rights, duties, and functions mentioned in this section and in response to the mandate expressed in Article XVI, Section 59 of the Texas Constitution and is in the exercise of the police powers of the state in the interest of the public welfare.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.020, eff. Sept. 1, 1985.

Sec. 11.303. RECORDATION AND LIMITATION OF CERTAIN WATER RIGHTS CLAIMS. (a) This section applies to:

(1) claims of riparian water rights;

(2) claims under Section 11.143 of this code to impound, divert, or use state water for other than domestic or livestock purposes, for which no permit has been issued;

(3) claims of water rights under the Irrigation Acts of 1889 and 1895 which were not filed with the State Board of Water Engineers in accordance with the Irrigation Act of 1913, as amended; and

(4) other claims of water rights except claims under permits or certified filings.

(b) Any claim to which this section applies shall be recognized only if valid under existing law and only to the extent of the maximum actual application of water to beneficial use without waste during any calendar year from 1963 to 1967, inclusive. However, in any case where a claimant of a riparian right has prior to August 28, 1967, commenced or completed the construction of works designed to apply a greater quantity of water to beneficial use, the right shall be recognized to the extent of the maximum amount of water actually applied to beneficial use without waste during any calendar year from 1963 to 1970, inclusive.

(c) On or before September 1, 1969, every person claiming a water right to which this section applies shall file with the commission a statement setting forth:

(1) the name and address of the claimant;

(2) the location and the nature of the right claimed;

(3) the stream or watercourse and the river basin in which the right is claimed;

(4) the date of commencement of works;

(5) the dates and volumes of use of water; and

(6) other information the commission may require to show the nature and extent of the claim.

(d) A person who files a statement as provided in this section shall certify under oath that the statements made in support of his claim are true and correct to the best of his knowledge and belief.

(e) A claimant who desires recognition of a right based on use from 1968 to 1970, inclusive, as provided in Subsection (b) of this section shall file an additional sworn statement on or before July 1, 1971.

(f) The commission shall prescribe forms for the sworn statements required by this section, but use of the commission forms is not mandatory.

(g) On or before January 1, 1968, and June 1, 1969, the commission shall cause notice of the requirements of this section to be published once each week for two consecutive weeks in newspapers having general circulation in each county of the state and by first-class mail to each user of surface water who has filed a report of water use with the commission.

(h) On sworn petition, notice, and hearing as prescribed for applications for permits and upon finding of extenuating circumstances and good cause shown for failure to timely file, the commission may authorize the filing of the sworn statement or statements required by this section until entry of a preliminary determination of claims of water rights in accordance with Section 11.309 of this code which includes the area described in the petition or, if a preliminary determination has not been entered, until September 1, 1974.

(i) Since the filing of all claims to use public water is necessary for the conservation and best utilization of the water resources of the state, failure to file a sworn statement in substantial compliance with this section extinguishes and bars any claim of water rights to which this section applies.

(j) A sworn statement submitted under this section is binding on the person submitting it and his successors in interest, but is not binding on the commission or any other person in interest.

(k) Nothing in this section shall be construed to recognize any water right which did not exist before August 28, 1967.

(l) This section does not apply to use of water for domestic or livestock purposes.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 978, ch. 367, Sec. 2, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.021, eff. Sept. 1, 1985.

Sec. 11.304. ADJUDICATION OF WATER RIGHTS. The water rights in any stream or segment of a stream may be adjudicated as provided in this subchapter:

(1) on the commission's own motion;

(2) on petition to the commission signed by 10 or more claimants of water rights from the source of supply; or

(3) on petition of the executive director.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981.

Sec. 11.305. INVESTIGATION. (a) Promptly after a petition is filed under Section 11.304 of this Code, the commission shall consider whether the adjudication would be in the public interest. If the commission finds that an adjudication would be in the public interest, it shall enter an order to that effect, designating the stream or segment to be adjudicated. The executive director shall have an investigation made of the area involved in order to gather relevant data and information essential to the proper understanding of the claims of water rights involved. The results of the investigation shall be reduced to writing and made a matter of record in the commission office.

(b) In connection with the investigation, the executive director shall have a map or plat made showing with substantial accuracy the course of the stream or segment and the location of reservoirs, diversion works, and places of use, including lands which are being irrigated or have facilities for irrigation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 978, ch. 367, Sec. 3, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.022, eff. Sept. 1, 1985.

Sec. 11.306. NOTICE OF ADJUDICATION. (a) The commission shall prepare a notice of adjudication which describes the stream or segment to be adjudicated and the date by which all claims of water rights in the stream or segment shall be filed with the commission. The date shall not be less than 90 days after the date the notice is issued.

(b) The notice shall be published once a week for two consecutive weeks in one or more newspapers having general circulation in the counties in which the stream or segment is located.

(c) The notice shall also be sent by first-class mail to each

claimant of water rights whose diversion is within the stream or segment to be adjudicated, to the extent that the claimants can reasonably be ascertained from the records of the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 978, ch. 367, Sec. 4, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.023, eff. Sept. 1, 1985.

Sec. 11.307. FILING OF SWORN CLAIMS. (a) Every person claiming a water right of any nature, except for domestic or livestock purposes, from the stream or segment under adjudication shall file a sworn claim with the commission within the time prescribed in the notice of adjudication, including any extensions of the prescribed time, setting forth:

(1) the name and post-office address of the claimant;

(2) the location and nature of the right claimed, including a description of any permit or certified filing under which the claim is made;

(3) the purpose of the use;

(4) a description of works and irrigated land; and

(5) all other information necessary to show the nature and extent of the claim.

(b) The commission shall prescribe forms for claims, but use of the commission forms is not mandatory.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.024, eff. Sept. 1, 1985.

Sec. 11.308. HEARINGS ON CLAIMS; NOTICE. The commission shall set a time and a place for hearing all claims. Not less than 30 days before commencement of the hearings, the commission shall give notice of the hearings by certified mail to all persons who have filed claims in accordance with Section 11.307 of this code, or this notice may be included in the notice of adjudication provided in Section 11.306 of this code. The hearings shall be conducted as provided in Section 11.337 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.309. PRELIMINARY DETERMINATION OF CLAIMS. (a) On completion of the hearings, the commission shall make a preliminary determination of the claims to water rights under adjudication.

(b) One copy of the preliminary determination shall be furnished without charge to each person who filed a claim in accordance with Section 11.307 of this code. Additional copies of the preliminary determination shall be made available for public inspection at convenient locations throughout the river basin, as designated by the commission. Copies shall also be made available to other interested persons at a reasonable price, based on the cost of reproduction.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.310. EVIDENCE OPEN TO INSPECTION. All evidence presented to or considered by the commission shall be open to public inspection for a period of not less than 60 days, as fixed by the commission, after the notice prescribed in Section 11.312 of this code is issued.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.311. DATE FOR FILING CONTESTS. The commission shall set a date for filing contests on the preliminary determination, which date shall not be less than 30 days after the period for public inspection of the evidence has closed.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.312. NOTICE OF PRELIMINARY DETERMINATION; COPIES. (a) Promptly after the preliminary determination is made as provided in

Section 11.309 of this code, the commission shall publish notice of the determination once a week for two consecutive weeks in one or more newspapers having general circulation in the river basin in which the stream or segment that is the subject of the adjudication is located.

(b) The commission shall also send notice by first-class mail to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the commission.

(c) Each notice shall state:

(1) the place and the period of time that the preliminary determination and evidence presented to or considered by the commission will be open for public inspection;

(2) the locations throughout the river basin where copies of the preliminary determination will be available for public inspection;

(3) the method of ordering copies of the preliminary determination and the charge for copies;

(4) the date by which contests on the preliminary determination must be filed.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.025, eff. Sept. 1, 1985.

Sec. 11.313. FILING CONTESTS. (a) Any water right claimant affected by the preliminary determination, including any claimant to water rights within the river basin but outside the stream or segment under adjudication, who disputes the preliminary determination may within the time for filing contests prescribed by the commission in the notice, including any extension of the time, file a written contest with the commission, stating with reasonable certainty the grounds of his contest.

(b) The statement filed to contest a preliminary determination must be verified by an affidavit of the contestant, his agent, or his attorney.

(c) If the contest is directed against the preliminary determination of the water rights of other claimants, a copy shall be served on each of these claimants or his attorney by certified mail,

and proof of service shall be filed with the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.314. HEARING ON CONTEST; NOTICE. After the time for filing contests has expired, the commission shall prepare a notice setting forth the part of the preliminary determination to which each contest is directed and the time and place of a hearing on the contest. The notice shall be sent to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the commission. The hearing shall be conducted as provided in Section 11.337 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.026, eff. Sept. 1, 1985.

Sec. 11.315. FINAL DETERMINATION. On completion of the hearings on all contests, the commission shall make a final determination of the claims to water rights under adjudication. The commission shall send a copy of the final determination and any modification of the final determination to each claimant whose rights are adjudicated and to each contesting party.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.316. APPLICATION FOR REHEARING. Within 30 days from the date of the final determination, any affected party may apply to the commission for a rehearing. Applications for rehearing which in the opinion of the commission are without merit may be denied without notice to other parties, but no application for rehearing shall be granted without notice to each claimant whose rights are adjudicated and to each contesting party.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.317. FILING FINAL DETERMINATION WITH DISTRICT COURT. (a) As soon as practicable after the disposition of all applications for rehearing, the commission shall file a certified copy of the final determination, together with all evidence presented to or considered by the commission, in a district court of any county in which the stream or segment under adjudication is located. However, if the stream or segment under adjudication includes all or parts of three or more counties and if 10 or more affected persons who appeared in the proceedings petition the commission to do so, the commission shall file the action in a convenient district court of a judicial district which is not within the river basin of the stream or segment under adjudication.

(b) The commission shall obtain an order from the court fixing a time not less than 30 days from the date of the order for the filing of exceptions to the final determination and also fixing a time not less than 60 days from the date of the order for the commencement of hearings on exceptions.

(c) The commission shall immediately give written notice of the court order by certified mail to all parties who appeared in the proceedings before the commission. The commission shall file proof of the service with the court.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.318. EXCEPTIONS TO FINAL DETERMINATION. (a) Any affected person who appeared in the proceeding before the commission may file exceptions to the final determination. An exception must state with a reasonable degree of certainty the grounds for the exception and must specify the particular paragraphs and pages of the determination to which the exception is taken.

(b) Three copies of the exceptions shall be filed in court, and a copy shall be served on the commission. The commission shall make copies of all exceptions available at a reasonable price, based on the cost of reproduction.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.319. HEARINGS ON EXCEPTIONS. (a) The court shall hear any exceptions that have been filed. The commission and all affected persons who appeared in the proceedings before the commission are entitled to appear and be heard on the exceptions. The court may permit other parties in interest to appear and be heard for good cause shown.

(b) The court may conduct nonjury hearings and proceedings at any convenient location within the state. Actual expenses incurred by the court outside its judicial district shall be taxed as costs.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.320. SCOPE OF JUDICIAL REVIEW. (a) In passing on exceptions, the court shall determine all issues of law and fact independently of the commission's determination. The substantial evidence rule shall not be used. The court shall not consider any exception which was not brought to the commission's attention by application for rehearing. The court shall not consider any issue of fact raised by an exception unless the record of evidence before the commission reveals that the question was genuinely in issue before the commission.

(b) A party in interest may demand a jury trial of any issue of fact, but the court may in its discretion have a separate trial with a separate jury of any such issue.

(c) The legislature declares that the provisions of this section are not severable from the remainder of this subchapter and that this subchapter would not have been passed without the inclusion of this section. If this section is for any reason held invalid, unconstitutional, or inoperative in any way, the holding applies to the entire subchapter so that the entire subchapter is null and void.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.321. EVIDENCE. Any exception heard by the court without a jury may be resolved on the record of evidence before the commission, or the court may take additional evidence or direct that additional evidence be heard by the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.322. FINAL DECREE. (a) After the final hearing, the court shall enter a decree affirming or modifying the order of the commission.

(b) The court may assess the costs as it deems just.

(c) An appeal may be taken from the decree of the court in the same manner and with the same effect as in other civil cases.

(d) The final decree in every water right adjudication is final and conclusive as to all existing and prior rights and claims to the water rights in the adjudicated stream or segment of a stream. The decree is binding on all claimants to water rights outside the adjudicated stream or segment of a stream.

(e) Except for domestic and livestock purposes or rights subsequently acquired by permit, a water right is not recognized in the adjudicated stream or segment of a stream unless the right is included in the final decree of the court.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.323. CERTIFICATE OF ADJUDICATION. (a) When a final determination of the rights to the waters of a stream has been made in accordance with the procedure provided in this subchapter and the time for a rehearing has expired, the commission shall issue to each person adjudicated a water right a certificate of adjudication, signed by the presiding officer of the commission and bearing the seal of the commission.

(b) In the certificate, the commission shall include:

(1) a reference to the final decree;

(2) the name and post-office address of the holder of the adjudicated right;

(3) the priority, extent, and purpose of the adjudicated

right and, if the right is for irrigation, a description of the irrigated land; and

(4) all other information in the decree relating to the adjudicated right.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 965, Sec. 16.02, eff. Sept. 1, 2001.

Sec. 11.324. RECORDATION OF CERTIFICATE. (a) The commission shall transmit the certificate of adjudication or a true copy to the county clerk of each county in which the appropriation is made.

(b) On receipt of the recording fee from the holder of the certificate, the county clerk shall file and record the certificate in a well-bound book provided and kept for that purpose only. The clerk shall index the certificate alphabetically under the name of the holder of the certificate of adjudication and under the name of the stream or source of water supply.

(c) When a certificate of adjudication is filed and recorded as provided in this section, the county clerk shall deliver the certificate on demand to the holder.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.325. WATER DIVISIONS. The commission shall divide the state into water divisions for the purpose of administering adjudicated water rights. Water divisions may be created from time to time as the necessity arises. The divisions shall be constituted to secure the best protection to the holders of water rights and the most economical supervision on the part of the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.027, eff. Sept. 1, 1985.

Sec. 11.326. APPOINTMENT OF WATERMASTER. (a) The executive director may appoint one watermaster for each water division.

(b) A watermaster holds office until a successor is appointed. The executive director may remove a watermaster at any time.

(c) The executive director may employ assistant watermasters and other employees necessary to aid a watermaster in the discharge of his duties.

(d) In a water division in which the office of watermaster is vacant, the executive director has the powers of a watermaster.

(e) The executive director shall supervise and generally direct the watermaster in the performance of his duties as defined in Section 11.327. A watermaster is responsible to the executive director for the proper performance of his duties.

(f) A person dissatisfied with any action of a watermaster may apply to the executive director for relief.

(g) For a water basin in which a watermaster is not appointed, the executive director shall:

(1) evaluate the water basin at least once every five years to determine whether a watermaster should be appointed; and

(2) report the findings and make recommendations to the commission.

(h) The commission shall:

(1) determine the criteria or risk factors to be considered in an evaluation under Subsection (g); and

(2) include the findings and recommendations under Subsection (g) in the commission's biennial report to the legislature.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 696, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 5.05, eff. September 1, 2011.

Sec. 11.3261. WATERMASTER ADVISORY COMMITTEE. (a) The executive director shall establish a watermaster advisory committee consisting of a minimum of nine members, but no more than 15 members, who are holders of water rights or representatives of holders of water rights in the water division of a watermaster. In appointing members of the advisory committee the executive director shall consider geographic representation, amount of water rights held,

different types of holders of water rights and users such as water districts, municipal suppliers, irrigators, and industrial users, and experience and knowledge in water management practices.

(b) An advisory committee member is not entitled to reimbursement of expenses incurred or to compensation.

(c) An advisory committee member shall serve a term of two years from the date of initial appointment by the executive director and hold office until a successor is appointed.

(d) The advisory committee shall meet within 30 days following initial appointment by the executive director and elect a presiding officer who shall serve on an annual basis. Following the first meeting, the committee shall meet regularly as necessary.

(e) The advisory committee's duties include:

(1) providing recommendations to the executive director regarding activities of benefit to the holders of water rights in the administration and distribution of water to holders of water rights;

(2) review and comment to the executive director on the annual budget of the watermaster operations; and

(3) other duties as may be requested by the executive director with regard to the watermaster operations or as requested by holders of water rights in a water division which the committee deems of benefit to the administration of water rights in water divisions.

Added by Acts 1997, 75th Leg., ch. 696, Sec. 2, eff. Sept. 1, 1997.

Sec. 11.327. DUTIES OF WATERMASTER. (a) A watermaster shall divide the water of the streams or other sources of supply of his division in accordance with the adjudicated water rights.

(b) A watermaster shall regulate or cause to be regulated the controlling works of reservoirs and diversion works in time of water shortage, as is necessary because of the rights existing in the streams of his division, or as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled.

(c) A watermaster may regulate the distribution of water from any system of works that serves users whose rights have been separately determined.

(d) A watermaster's duties shall not include activities which

relate to other programs of the commission, except in situations of imminent threat to public health and safety or the environment.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 696, Sec. 3, eff. Sept. 1, 1997.

Sec. 11.3271. POWERS AND DUTIES OF RIO GRANDE WATERMASTER; DELIVERY OF WATER DOWN BANKS AND BED OF RIO GRANDE. (a) This section applies only to the watermaster with jurisdiction over the Rio Grande and the water division for which that watermaster is appointed.

(b) The watermaster shall divide the water of the streams or other sources of supply of the division in accordance with the adjudicated water rights.

(c) The watermaster shall regulate or cause to be regulated the controlling works of reservoirs and diversion works in time of water shortage, as is necessary because of the rights existing in the streams of the division, or as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled.

(d) The watermaster may regulate the distribution of water from any system of works that serves users whose rights have been separately determined.

(e) The watermaster's duties do not include activities that relate to other programs of the commission, except as provided by this section. The watermaster's duties shall include activities that relate to situations of imminent threat to public health and safety or the environment. The commission shall adopt rules:

(1) defining situations of imminent threat under this section; and

(2) addressing the watermaster's duties in response to terrorism.

(f) The watermaster may store in a reservoir for release at a later time water in transit that is being conveyed down the banks and bed of the Rio Grande under a permit issued by the commission and in accordance with rules prescribed by the commission. In this section, "water in transit" means privately owned water, not including state water, that a person has pumped from an underground reservoir and

that is in transit between the point of discharge into the river and the place of use or the point of diversion by a person who has contracted with the owner of the water to purchase the water. The contract must specify that the contract is for the purchase and delivery of a specified amount of water less the carriage losses incurred in transit, as described and measured according to commission rules.

(g) The watermaster may store water under Subsection (f) only if the storage does not hinder the ability of any other holders of Rio Grande surface water rights to store the maximum authorized capacity in a reservoir as specified by commission rules and relevant permits, certified filings, or certificates of adjudication.

(h) Before granting a permit to convey water down the banks and bed of the Rio Grande, the commission shall adopt rules that provide for the methods and procedures by which the watermaster shall account for any discharge, delivery, conveyance, storage, diversion, or associated loss of water conveyed down the banks and bed of the Rio Grande. A permit to convey water down the banks and bed of the Rio Grande may not allow the permit holder to share in any beneficial state water inflows into the Rio Grande. The permit holder is entitled to convey only the amount of water specified in the permit, less the carriage losses incurred in transit, as described and measured according to commission rules. A rule adopted by the commission under this subsection must be consistent with the Treaty Relating to the Utilization of the Waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of Mexico, concluded by the United States and the United Mexican States on February 3, 1944, and with any minute order adopted by the International Boundary and Water Commission.

(i) In considering an application for a permit to convey water down the banks and bed of the Rio Grande, the commission shall consider the quality of the water to be conveyed. The commission may not issue a permit if it determines that the water to be conveyed would degrade the water quality of the Rio Grande.

Text of subsec. (j) as added by Acts 2003, 78th Leg., ch. 385, Sec. 6.01

(j) Notwithstanding any other law, the watermaster is the official recorder for all instruments, including deeds, deeds of trust, financing statements, security agreements, and liens, that the commission authorizes or requires to be filed in connection with

water rights relating to water in the lower, middle, or upper basin of the Rio Grande that are subject to a permit, certified filing, or certificate of adjudication. An instrument shall be filed with the watermaster under this subsection in the same manner as required by other law for the same type of instrument. The filing of an instrument under this subsection results in the same legal and administrative status and consequences as a filing under other law for the same type of instrument. An instrument filed under this subsection shall be construed by a court, financial institution, or other affected person in the same manner as an instrument of the same type that is filed under other law. The watermaster may charge and collect a fee for the recordation of instruments under this subsection in the same amount as the fee collected by the county clerk of Cameron County for the recordation of similar instruments. The commission by rule shall prescribe the procedures necessary for the proper implementation of this subsection, including reasonable transition provisions, if appropriate.

Text of subsec. (j) as added by Acts 2003, 78th Leg., ch. 281, Sec. 1

(j) The watermaster shall maintain a central repository which shall be made available to the public that includes certified copies of all instruments, including deeds, deeds of trust, and liens, that the commission requires to be filed in connection with water rights relating to water in the lower, middle, or upper basin of the Rio Grande and that are subject to a permit, certified filing, or certificate of adjudication. On or after September 1, 2003, a lien against a water right shall not be effective against third parties unless a certified copy of the instrument is filed with the watermaster and all requirements under other law are met. The validity of any liens or filings made prior to September 1, 2003, is not affected by this section. This section does not affect the validity of a lien as between the holder of the water right and the holder of the lien or the requirements or validity of any other law governing the perfection and recordation of these instruments. The executive director may charge a fee for the filing of certified copies of instruments. A fee collected under this section shall be deposited to the credit of the watermaster fund.

(k) This section does not apply to the Rio Grande above the Fort Quitman Dam.

Added by Acts 2003, 78th Leg., ch. 281, Sec. 1, eff. Sept. 1, 2003

and Acts 2003, 78th Leg., ch. 385, Sec. 6.01, eff. Sept. 1, 2003.

Sec. 11.328. WATERMASTER'S NOTICE POSTED. If, in the performance of his duties, a watermaster regulates diversion works or the controlling works of reservoirs, he shall attach to the works a written notice, properly dated and signed, stating that the works have been properly regulated and are wholly under his control. The notice is legal notice to all parties interested in the diversion and distribution of the water served by the diversion works or reservoir.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.329. COMPENSATION AND EXPENSES OF WATERMASTER. (a) The commission shall pay the compensation and necessary expenses of a watermaster, assistant watermasters, and other necessary employees, but the holders of water rights that have been determined or adjudicated and are to be administered by the watermaster shall reimburse the commission for the compensation and expenses. Necessary expenses shall be limited to costs associated with streamflow measurement and monitoring, water accounting, assessment billing and collection associated with a watermaster's operation, and other duties a watermaster may be required to perform under this subchapter.

(b) After the adjudication decree becomes final, and each fiscal year thereafter, the executive director shall provide notice to each holder of water rights under the decree, at least 30 days prior to the commission's holding a public hearing as provided in Subsection (c), of the proposed budget for their watermaster operations showing the amount of compensation and expenses that will be required annually for the administration of the water rights so determined. This budget shall be furnished to the watermaster advisory committee for comment at least 30 days prior to notification to each holder of water rights.

(c) The commission shall hold a public hearing on the proposed fiscal year budget for each watermaster operation. The commission shall determine the apportionment of the costs of administration of adjudicated water rights among the holders of the rights. After a

public hearing, the commission shall issue an order assessing the annual cost against the holders of water rights to whom the water will be distributed under the final decree. The commission shall equitably apportion the costs. The executive director may provide for payments in installments and shall specify the dates by which payments shall be made to the commission. At the request of the watermaster advisory committee the commission may modify a fiscal year budget for any water division.

Text of subsec. (d) as amended by Acts 1997, 75th Leg., ch. 333, Sec. 3

(d) The executive director shall deposit all collections under this section to the credit of the watermaster administration account.

Text of subsec. (d) as amended by Acts 1997, 75th Leg., ch. 696, Sec. 4

(d) The executive director shall collect the assessments and shall account for assessments separately for each water division and shall deposit assessments collected to a special fund known as the watermaster fund established and governed by Section 11.3291.

(e) No water shall be diverted, taken, or stored by, or delivered to, any person while he is delinquent in the payment of his assessed costs.

(f) An order of the commission assessing costs remains in effect until the commission issues a further order. The commission may modify, revoke, or supersede an order assessing costs with a subsequent order. The commission may issue supplementary orders from time to time to apply to new diversions.

(g) The commission may not assess costs under this section against a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts or against a holder of a water right placed in the Texas Water Trust for a term of at least 20 years.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.028, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 118, Sec. 1, eff. Aug. 31, 1987; Acts 1997, 75th Leg., ch. 333, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 696, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 20.01, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 234, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.18, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.18, eff. September 1, 2007.

Sec. 11.3291. WATERMASTER FUND. (a) The watermaster fund is created as a special fund in the state treasury and shall be administered by the commission under this subchapter and rules adopted by the commission.

(b) The legislature hereby appropriates without further legislative action any funds deposited in the watermaster's fund as provided in this subchapter. The watermaster fund shall be used: (1) to pay the compensation and expenses of the watermaster in each water division; (2) to pay expenditures for equipment, facilities, and capital expenditures necessary to the watermaster operation when recommended by the watermaster advisory committee and the executive director and approved by the commission when hearings are required as provided in Section 11.329; and (3) to pay into the general revenue fund for use without further appropriation for purposes of providing overhead and administrative expenses of the commission in an amount not greater than 10 percent times the approved annual budget under this subchapter in a water division. Any amounts not used in one fiscal year shall be carried over and used for the following fiscal year's operational expenses of the watermaster.

(c) The watermaster fund shall be accounted for separately according to the appropriate water division from which the watermaster's assessment is collected.

(d) The watermaster fund shall consist of:

(1) fees collected in each water division;

(2) money from gifts, grants, or donations to the fund for designated or general lawful use; and

(3) money from any other source designated by the legislature or the commission.

(e) The commission may invest, reinvest, and direct the investment of any available money in the fund as provided by law for the investment of money under Section 404.024, Government Code.

Added by Acts 1997, 75th Leg., ch. 696, Sec. 5, eff. Sept. 1, 1997.

Sec. 11.330. OUTLET FOR FREE PASSAGE OF WATER. The owner of any works for the diversion or storage of water shall maintain a substantial headgate at the point of diversion, or a gate on each discharge pipe of a pumping plant, constructed so that it can be locked at the proper place by the watermaster, or a suitable outlet in a dam to allow the free passage of water that the owner of the dam is not entitled to divert or impound. The commission shall adopt rules, and the executive director shall enforce the rules, governing the type and location of the headgates or gates and the outlets to allow the free passage of water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.029, eff. Sept. 1, 1985.

Sec. 11.331. MEASURING DEVICES. The commission, by rule, may require the owner of any works for the diversion, taking, storage, or distribution of water to construct and maintain suitable measuring devices at points that will enable the watermaster to determine the quantities of water to be diverted, taken, stored, released, or distributed in order to satisfy the rights of the respective users.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.029, eff. Sept. 1, 1985.

Sec. 11.332. INSTALLATION OF FLUMES. The commission, by rule, may require flumes to be installed along the line of any ditch if necessary for the protection of water rights or other property.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.029, eff. Sept. 1, 1985.

Sec. 11.333. FAILURE TO COMPLY WITH COMMISSION RULES. If the

owner of waterworks using state water refuses or neglects to comply with the rules adopted pursuant to Section 11.330, 11.331, or 11.332 of this code, the executive director, after 10 days notice or after a period of additional time that is reasonable under the circumstances, may direct the watermaster to make adjustments of the control works to prevent the owner of the works from diverting, taking, storing, or distributing any water until he has fully complied with the rules.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.029, eff. Sept. 1, 1985.

Sec. 11.334. SUIT AGAINST COMMISSION FOR INJURY. Any person who is injured by an act of the commission under this subchapter may bring suit against the commission to review the action or to obtain an injunction. If the water right involved has been adjudicated as provided in this subchapter, the court shall issue an injunction only if it is shown that the commission has failed to carry into effect the decree adjudicating the water right.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.029, eff. Sept. 1, 1985.

Sec. 11.335. ADMINISTRATION OF WATER RIGHTS NOT ADJUDICATED. (a) If any area in which water rights of record in the office of the commission have not been adjudicated, the claimants of the rights and the commission may enter into a written agreement for their administration.

(b) An agreement made under authority of this section shall provide:

(1) the basis and manner of distribution of the water to which the agreement relates;

(2) the services of a special watermaster, and assistants if necessary, to carry out the agreement; and

(3) the allocation, collection, and payment of the annual costs of administration.

(c) An agreement to administer unadjudicated water rights shall

be recorded in the offices of the commission and of the county clerk of each county in which any of the works or lands affected by the agreement are located.

(d) The administration of water rights by agreement is governed by the provisions of this subchapter except as regards allocation and payment of the expenses of the administration.

(e) No agreement authorized by this section impairs any vested right to the use of water or creates any additional rights to the use of water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.030, eff. Sept. 1, 1985.

Sec. 11.336. ADMINISTRATION OF PERMITS ISSUED AFTER ADJUDICATION. Permits, other than temporary permits, that are issued by the commission to appropriate water from an adjudicated stream or segment are subject to administration in the same manner as is provided in this subchapter for adjudicated water rights.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.337. HEARINGS: NOTICE AND PROCEDURE. (a) The commission shall give notice of a hearing or other proceeding it orders under this subchapter in the manner prescribed in the procedural rules of the commission, unless this subchapter specifically provides otherwise.

(b) In any proceeding in any part of the state, the commission may:

(1) take evidence, including the testimony of witnesses;

(2) administer oaths;

(3) issue subpoenas and compel the attendance of witnesses in the same manner as subpoenas are issued out of the courts of the state;

(4) compel witnesses to testify and give evidence; and

(5) order the taking of depositions and issue commissions for the taking of depositions in the same manner as depositions are obtained in civil actions.

(c) Evidence may be taken by a duly appointed reporter before the commission or before an authorized representative who has the power to administer oaths.

(d) If a person neglects or refuses to comply with an order or subpoena issued by the commission or refuses to testify on any matter about which he may be lawfully interrogated, the commission may apply to a district court of the county in which the proceeding is held to punish him in the manner provided by law for such disobedience in civil actions.

(e) The commission may adjourn its proceedings from time to time and from place to place.

(f) When a proceeding before the commission is concluded, the commission shall render a decision as to the matters concerning which the proceeding was held.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.338. CANCELLATION OF WATER RIGHTS. Nothing in this subchapter recognizes any abandoned or cancelled water right or impairs in any way the power of the commission under general law to forfeit, cancel, or find abandoned any water right, including adjudicated water rights.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.339. UNDERGROUND WATER NOT AFFECTED. This subchapter does not apply to underground water as defined in Chapter 52 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.340. ABATEMENT OF CERTAIN CIVIL SUITS. (a) Nothing in this subchapter prevents or precludes a person who claims the right to divert water from a stream from filing and prosecuting to a conclusion a suit against other claimants of the right to divert or

use water from the same stream. However, if the commission has ordered a determination of water rights as provided in this subchapter or if the commission orders such a determination within 90 days after notice of the filing of a suit, the suit shall be abated on the motion of the commission or any party in interest as to any issues involved in the water rights determination.

(b) If a suit is abated as provided in Subsection (a) of this section, the court may grant or continue any temporary relief necessary to preserve the status quo pending a final determination of the water rights involved.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.341. LIMITATION ON ACTIONS. This subchapter does not affect any action or proceeding instituted before August 28, 1967, or any right accrued before that date except those specifically provided for in this subchapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER H. COURT-APPOINTED WATERMASTER

Sec. 11.401. SCOPE OF SUBCHAPTER. The provisions of this subchapter apply to a suit if:

(1) the state is a party;

(2) the purpose of the suit is to determine the right of the parties to divert or use water of a surface stream; and

(3) rights are asserted to use water in, or divert water to, not more than four counties.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.402. APPOINTMENT AND AUTHORITY OF WATERMASTER. (a) A court having jurisdiction over a suit described in Section 11.401 of this code may appoint a watermaster with power to allocate and distribute, under the supervision of the court, the water taken into

judicial custody.

(b) The court may not appoint a watermaster with authority to act both upstream and downstream from an existing reservoir on any surface stream of the state. However, once a watermaster is appointed, the construction of a new reservoir does not invalidate his appointment or restrict his authority over that portion of the stream contemplated by the original order of appointment.

(c) Under terms and conditions prescribed by the court, the watermaster may incur necessary expenses, appoint necessary deputies and assistants, and perform duties and assume responsibilities delegated to him by the court.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.403. COMPENSATION OF WATERMASTER. The court shall fix the compensation of the watermaster and his staff.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.404. EXPENSES AND ASSESSMENT OF COSTS OF WATERMASTER. (a) Except as provided by Subsection (e), the trial court shall assess the costs and expenses of the watermaster and his staff against all persons receiving an allocation of the water in judicial custody. The court shall assess the costs and expenses monthly or at other time intervals ordered by the court.

(b) The court shall assess the costs and expenses on the basis of:

(1) acreage;

(2) acre-feet of allocated water;

(3) per capita; or

(4) any other formula the court, after notice and hearing, determines to be the most equitable.

(c) During the pendency of an appeal, the trial court, in its discretion, may assess costs against some parties on one basis and against other parties on another basis.

(d) The costs and expenses are not to be taxed as ordinary court costs, but are to be considered costs necessary to protect the

rights and privileges of the parties receiving allocations of water during the litigation and are to be paid by those parties.

(e) The court may not assess costs and expenses under this section against:

(1) a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts; or

(2) a holder of a water right placed in the Texas Water Trust for a term of at least 20 years.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 234, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.19, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.19, eff. September 1, 2007.

Sec. 11.405. FAILURE TO PAY ASSESSED COSTS. If the costs and expenses assessed are not paid within the time prescribed by the court, the court after notice and hearing may withdraw or limit allocations of water to any party failing or refusing to pay his share until all costs and expenses assessed against him are paid in full.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.406. JUDICIAL CUSTODY OF WATER DURING APPEAL. If a party appeals the judgment of the trial court, that court may retain custody of the water which it has previously taken into judicial custody and over which it has appointed a watermaster. Until final judgment is entered in the case, the trial court has exclusive jurisdiction to administer, allocate, and distribute the water retained in its custody, as provided in Section 11.407 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.407. ALLOCATION AND DISTRIBUTION OF WATER DURING APPEAL. During the pendency of an appeal, the trial court shall limit the allocation and distribution of the water in its custody to the parties adjudicated to have a valid right to use the water. However, if any party prosecutes an appeal and files a supersedeas bond, the trial court shall make any necessary adjustments in the water allocations and allocate to that party the same amount of water that he received during the proceedings in the trial court.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.408. RETENTION OF WATERMASTER DURING APPEAL. During the pendency of an appeal, the trial court may retain the watermaster in office with the same authority he had during the trial proceedings.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.409. VIOLATIONS OF COURT ORDERS. If a party violates any order of the trial court either during trial proceedings or during an appeal, the trial court may limit or withdraw his allocation of water until he corrects the violation to the satisfaction of the court.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER I. COMMISSION-APPOINTED WATERMASTER

Sec. 11.451. COMMISSION AUTHORITY. On petition of 25 or more holders of water rights in a river basin or segment of a river basin or on its own motion the commission may authorize the executive director to appoint a watermaster for a river basin or segment of a river basin if the commission finds that the rights of senior water rights holders in the basin or segment of the basin are threatened.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.

Sec. 11.452. PROCEDURE FOR DETERMINATION. (a) On receiving a petition for appointment of a watermaster or on its own motion, the commission shall call and hold a hearing to determine if a need exists for appointment of a watermaster for the river basin or segment of the river basin.

(b) At the hearing persons who hold water rights in the river basin or segment of the river basin may appear before the commission and submit testimony and evidence relating to the need for appointment of a watermaster.

(c) After the hearing, the commission shall make a written determination as to whether a threat exists to the rights of senior water rights holders in the river basin or segment of the river basin and shall issue an order either finding that a threat exists and directing appointment of a watermaster or denying appointment of a watermaster.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.

Sec. 11.453. APPOINTMENT OF WATERMASTER. (a) On issuance of an order under Section 11.452 of this chapter directing appointment of a watermaster, the executive director shall appoint a watermaster for the river basin or segment of the river basin covered by the commission order.

(b) A person appointed as a watermaster under this section may not be:

(1) the holder of a water right in the river basin or segment of the river basin to be under his jurisdiction as watermaster;

(2) a purchaser of water from the holder of a water right in the river basin or segment of the river basin under his jurisdiction as watermaster; or

(3) a landowner of any land adjacent to the river or segment of the river under his jurisdiction as watermaster.

(c) A watermaster holds office until a successor is appointed. The executive director may remove a watermaster at any time.

(d) The executive director may employ assistant watermasters and other employees necessary to aid a watermaster in the discharge

of his duties.

(e) In a segment or basin in which the office of watermaster is vacant, the executive director has the powers of a watermaster.

(f) The executive director shall supervise and generally direct the watermaster in the performance of his duties. A watermaster is responsible to the executive director for the proper performance of his duties.

(g) A person dissatisfied with any action of a watermaster may apply to the executive director for relief.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.

Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) For each river basin or segment of a river basin for which the executive director appoints a watermaster under this subchapter, the executive director shall appoint a watermaster advisory committee consisting of at least nine but not more than 15 members. A member of the advisory committee must be a holder of a water right or a representative of a holder of a water right in the river basin or segment of the river basin for which the watermaster is appointed. In appointing members to the advisory committee, the executive director shall consider:

(1) geographic representation;

(2) amount of water rights held;

(3) different types of holders of water rights and users, including water districts, municipal suppliers, irrigators, and industrial users; and

(4) experience and knowledge of water management practices.

(b) An advisory committee member is not entitled to reimbursement of expenses or to compensation.

(c) An advisory committee member serves a two-year term expiring August 31 of each odd-numbered year and holds office until a successor is appointed.

(d) The advisory committee shall meet within 30 days after the date the initial appointments have been made and shall select a presiding officer to serve a one-year term. The committee shall meet regularly as necessary.

(e) The advisory committee shall:

(1) make recommendations to the executive director regarding activities of benefit to the holders of water rights in the

administration and distribution of water to holders of water rights in the river basin or segment of the river basin for which the watermaster is appointed;

(2) review and comment to the executive director on the annual budget of the watermaster operation; and

(3) perform other advisory duties as requested by the executive director regarding the watermaster operation or as requested by holders of water rights and considered by the committee to benefit the administration of water rights in the river basin or segment of the river basin for which the watermaster is appointed.

Added by Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.20, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.20, eff. September 1, 2007.

Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER. Section 11.327 applies to the duties and authority of a watermaster appointed for a river basin or segment of a river basin under this subchapter in the same manner as that section applies to the duties and authority of a watermaster appointed for a water division under Subchapter G.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.21, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.21, eff. September 1, 2007.

Sec. 11.455. COMPENSATION AND EXPENSES OF WATERMASTER. (a) Section 11.329 applies to the payment of the compensation and expenses of a watermaster appointed for a river basin or segment of a river basin under this subchapter in the same manner as that section applies to the payment of the compensation and expenses of a watermaster appointed for a water division under Subchapter G.

(b) The executive director shall deposit the assessments collected under this section to the credit of the watermaster fund.

(c) Money deposited under this section to the credit of the

watermaster fund may be used only for the purposes specified by Section 11.3291 with regard to the watermaster operation under this subchapter with regard to which the assessments were collected.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.21, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.21, eff. September 1, 2007.

Sec. 11.456. MAINTAINING CURRENT STATUS. (a) To protect water rights holders in a river basin or segment of a river basin during the proceedings under Section 11.452 of this code, the commission may issue an order or orders at the beginning of the proceedings under Section 11.452 of this code or may request the attorney general to seek injunctive relief to protect the water rights holders during the proceedings.

(b) On request of the commission, the attorney general shall seek injunctive relief to carry out the purpose of Subsection (a) of this section.

(c) The commission is not required to comply with the requirements of Chapter 2001, Government Code in issuing orders under Subsection (a) of this section and there is no right of appeal from those orders.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 11.457. ASSISTANCE TO WATERMASTER. The executive director shall provide the watermaster with such staff and facilities as are necessary to carry out this subchapter.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.

Sec. 11.458. APPLICATION OF SUBCHAPTER. This subchapter shall not apply to any river basin or segment of a river basin in which a

watermaster has been appointed pursuant to Subchapter G or H of this chapter.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER J. WETLANDS

Sec. 11.501. TITLE OF ACT. This Act shall be known and may be cited as the "Wetlands Act."

Added by Acts 1989, 71st Leg., ch. 1202, Sec. 1, eff. Aug. 28, 1989.

Sec. 11.502. DEFINITION. (1) The definition of the term "wetlands" within the State of Texas, for purposes of the Clean Water Act, 33 U.S.C. 1311, 1344; the Erodible Land and Wetland Conservation and Reserve Program, 16 U.S.C. 3801-3845; the Emergency Wetlands Resources Act of 1986, 16 U.S.C. 3901-3932; the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4370a, all statutory foundation for the Federal Wildlife Service's National Wetlands Inventory mapping, including the Water Bank Program for Wetlands Preservation, 16 U.S.C. 1301-1311; the Water Resources development project (wetland areas), 42 U.S.C. 1962d-5e; and the Migratory Bird Conservation Act, 16 U.S.C. 715-715r; and all Texas laws, rules, and regulations adopted pursuant to Chapter 2001, Government Code and interpretation and implementation of any kind whatsoever of both federal and state laws by agencies of the state, including any amendment or revision thereto, relating to wetlands, means an area (including a swamp, marsh, bog, prairie pothole, or similar area) having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation.

(2) The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(3) The term "hydrophytic vegetation" means a plant growing in: water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(4) The term "wetlands" does not include:

(A) irrigated acreage used as farmland;

(B) man-made wetlands of less than one acre; or

(C) man-made wetlands not constructed with wetland creation as a stated objective, including but not limited to impoundments made for the purpose of soil and water conservation which have been approved or requested by soil and water conservation districts.

Added by Acts 1989, 71st Leg., ch. 1202, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 11.503. APPLICABILITY TO MAN-MADE WETLANDS. Section 11.502(4)(C) applies only to man-made wetlands, the construction or creation of which commences on or after the effective date of this Act.

Added by Acts 1989, 71st Leg., ch. 1202, Sec. 1, eff. Aug. 28, 1989.

Sec. 11.504. APPLICABILITY TO CERTAIN MINING-RELATED ACTIVITIES. This Act shall not apply to surface mining and reclamation.

Added by Acts 1989, 71st Leg., ch. 1202, Sec. 1, eff. Aug. 28, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 24.003, eff. September 1, 2009.

Sec. 11.505. APPLICABILITY TO STATE REVOLVING LOAN FUND PROGRAM. This Act shall not apply to the state revolving loan fund program.

Added by Acts 1989, 71st Leg., ch. 1202, Sec. 1, eff. Aug. 28, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 24.004, eff. September 1, 2009.

Sec. 11.506. CONFLICT BETWEEN STATE AND FEDERAL LAW. If the state definition conflicts with the federal definition in any manner, the federal definition prevails.

Added by Acts 1989, 71st Leg., ch. 1202, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 24.005, eff. September 1, 2009.

SUBCHAPTER K. CONCHO RIVER WATERMASTER PROGRAM

Sec. 11.551. DEFINITIONS. In this subchapter:

(1) "Advisory committee" means the Concho River Watermaster Advisory Committee appointed under Section 11.557.

(2) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(3) "Program" means the Concho River Watermaster Program, a division of the South Texas Watermaster established by the Texas Commission on Environmental Quality and operating pursuant to rules and regulations promulgated by the Texas Commission on Environmental Quality.

(4) "Water right holder" means a person who holds a certificated right in water under the jurisdiction of the watermaster acting under this subchapter.

(5) "Water user" means a person, including a water right holder, who uses water under the jurisdiction of the watermaster acting under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

Sec. 11.552. CONCHO RIVER WATERMASTER PROGRAM. The Concho River Watermaster Program is established to ensure compliance with water rights in the area described by Section 11.553.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

Sec. 11.553. JURISDICTION OF WATERMASTER. The geographical and

jurisdictional boundaries of a watermaster acting under this subchapter shall be the Concho River segment of the Colorado River Basin that includes the Concho River and all of its tributaries, downstream on the main stem of the Concho River to a point on the Concho River prior to reaching, and upstream of the O. H. Ivie Reservoir located at and including the diversion point of Certificate of Adjudication No. 14-1393 (River Order No. 4954450000) in Concho County.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

Sec. 11.554. WATERMASTER; APPOINTMENT OF DEPUTY WATERMASTER. (a) The watermaster for the South Texas Watermaster Program shall serve as the watermaster for the program.

(b) The watermaster shall appoint a deputy watermaster, who must reside in the area described by Section 11.553.

(c) The watermaster or deputy watermaster may not be:

(1) a water right holder in the river basin or segment of the river basin under the program's jurisdiction;

(2) a purchaser of water from a water right holder in the river basin or segment of the river basin under the program's jurisdiction; or

(3) a landowner of any land adjacent to the river or segment of the river under the program's jurisdiction.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

Sec. 11.555. DUTIES AND AUTHORITY OF WATERMASTER. The watermaster has the same duties and authority under the Concho River Watermaster Program as the watermaster has under the South Texas Watermaster Program.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

Sec. 11.556. APPOINTMENT OF NONVOTING MEMBER OF SOUTH TEXAS

WATERMASTER ADVISORY COMMITTEE. (a) The executive director shall appoint a person who resides in the area described by Section 11.553 to the South Texas Watermaster Advisory Committee.

(b) Except as otherwise provided by this section, Section 11.3261 applies to a member of the South Texas Watermaster Advisory Committee appointed under this section.

(c) A member of the South Texas Watermaster Advisory Committee appointed under this section may attend all meetings of that committee and enter into discussions at the meetings, but the person may not vote at the meetings.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

Sec. 11.557. CONCHO RIVER WATERMASTER ADVISORY COMMITTEE. (a) The Concho River Watermaster Advisory Committee consists of 13 members appointed by the executive director as follows:

(1) six members selected from nominations received, one representing the City of Paint Rock and one representing each of the following stream segments or tributaries of the Concho River: Spring Creek, Dove Creek, South Concho, Middle Concho, and main stem of the Concho below Certificate of Adjudication No. 14-1337 (River Order No. 5460010000);

(2) six members selected from a list of candidates submitted by the City of San Angelo; and

(3) one member selected at the executive director's discretion.

(b) If the executive director does not receive nominations or a list of candidates as specified under Subsection (a), after reasonable notice the executive director may appoint to the advisory committee the appropriate number of members selected at the executive director's discretion.

(c) If a vacancy occurs on the advisory committee, the executive director shall fill the vacancy for the unexpired term by appointing a person selected in the same manner as the person being replaced.

(d) An advisory committee member shall serve for a term of two years.

(e) An advisory committee member serves without compensation.

(f) The advisory committee shall:

(1) provide recommendations to the watermaster and deputy watermaster regarding activities of benefit to the water right holders in the administration and distribution of water;

(2) advise the watermaster and deputy watermaster on complaints and enforcement matters;

(3) review, hold a public hearing on, and make recommendations on the annual budget proposed by the watermaster so as to cover all costs of the Concho River Watermaster Program; and

(4) provide assistance as requested by the watermaster, deputy watermaster, or water right holders.

(g) Actions of the advisory committee in which a vote is taken must receive a two-thirds affirmative vote of the members present to be approved.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

Sec. 11.558. FEES. Fees assessed under the Concho River Watermaster Program shall be of the same type and rate as those assessed under the South Texas Watermaster Program but may be adjusted as necessary to pay all expenses of the Concho River Watermaster Program. All costs of the Concho River Watermaster Program shall be assessed solely upon the water right holders subject to the Concho River Watermaster Program.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

Sec. 11.559. REFERENDUM. (a) On or after September 1, 2009, a water right holder may petition the advisory committee to conduct a referendum on the continuation of the program.

(b) The advisory committee shall conduct a referendum if it receives a petition signed by at least 50 percent of the water right holders.

(c) A referendum under this section must be held on a uniform election date, as provided by Section 41.001, Election Code.

(d) Only current water right holders are eligible to vote in the referendum.

(e) If at least 60 percent of the votes in the referendum favor discontinuing the program, the program shall be discontinued.

(f) A referendum under this section cannot be held more than once every four years.

(g) For purposes of this section, a water right holder shall be considered as one water right holder regardless of the number or amount of water rights held under a permit or certificate of adjudication.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

Sec. 11.560. COLORADO RIVER BASIN WATERMASTER PROGRAM. If a watermaster program is established for the entire Colorado River Basin, the Concho River Watermaster Program is discontinued, and the area described by Section 11.553 is under the jurisdiction of the watermaster for the Colorado River Basin Watermaster Program.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

Sec. 11.561. APPLICABILITY OF OTHER LAW AND COMMISSION RULES. A provision of this code or a rule adopted by the commission that relates to watermasters and does not conflict with the provisions of this subchapter applies to the program established under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

CHAPTER 12. PROVISIONS GENERALLY APPLICABLE TO WATER RIGHTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 12.001. DEFINITIONS. The definitions contained in Subchapter A, Chapter 11 of this code apply to this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. GENERAL POWERS AND DUTIES RELATING TO WATER RIGHTS

Sec. 12.011. PERMIT APPLICATIONS. The commission shall receive, administer, and act on all applications for permits and permit amendments:

(1) to appropriate public water for beneficial use or storage; or

(2) to construct works for the impoundment, storage, diversion, or transportation of public water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.031, eff. Sept. 1, 1985.

Sec. 12.012. EVALUATION OF OUTSTANDING PERMITS. The commission shall actively and continually evaluate outstanding permits and certified filings and shall carry out measures to cancel wholly or partially the certified filings and permits that are subject to cancellation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.031, eff. Sept. 1, 1985.

Sec. 12.013. RATE-FIXING POWER. (a) The utility commission shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12 of this code.

(b) In this section, "political subdivision" means incorporated cities, towns or villages, counties, river authorities, water districts, and other special purpose districts.

(c) The utility commission in reviewing and fixing reasonable rates for furnishing water under this section may use any reasonable basis for fixing rates as may be determined by the utility commission to be appropriate under the circumstances of the case being reviewed; provided, however, the utility commission may not fix a rate which a political subdivision may charge for furnishing water which is less than the amount required to meet the debt service and bond coverage requirements of that political subdivision's outstanding debt.

(d) The utility commission's jurisdiction under this section relating to incorporated cities, towns, or villages shall be limited

to water furnished by such city, town, or village to another political subdivision on a wholesale basis.

(e) The utility commission may establish interim rates and compel continuing service during the pendency of any rate proceeding.

(f) The utility commission may order a refund or assess additional charges from the date a petition for rate review is received by the utility commission of the difference between the rate actually charged and the rate fixed by the utility commission, plus interest at the statutory rate.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.07, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 7, eff. September 1, 2013.

Sec. 12.014. USE OF COMMISSION SURVEYS; POLICY. The commission shall make use of surveys, studies, and investigations conducted by the staff of the commission in order to ascertain the character of the principal requirements of the district regional division of the watershed areas of the state for beneficial uses of water, to the end that distribution of the right to take and use state water may be more equitably administered in the public interest, that privileges granted for recognized uses may be economically coordinated so as to achieve the maximum of public value from the state's water resources, and that the distinct regional necessities for water control and conservation and for control of harmful floods may be recognized.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.031, eff. Sept. 1, 1985.

Sec. 12.015. POWER TO CONDEMN WORKS. (a) The commission may condemn existing works if their existence or operation may, in the judgment of the commission, become a public menace or dangerous to life and property.

(b) In all cases of proposed condemnation, the commission shall notify the interested party of the contemplated action and shall specify a time for him to appear and be heard.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 12.016. POWER TO INSPECT. The executive director or his authorized agent may inspect any impoundment, diversion, or distribution works during construction to determine whether or not they are being constructed in a safe manner and whether or not they are being constructed according to the order of the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 12.017. POWER TO ENTER LAND. Any member or employee of the commission may enter any person's land, natural waterway, or artificial waterway for the purpose of making an investigation that would, in the judgment of the executive director, assist the commission in the discharge of its duties.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.031, eff. Sept. 1, 1985.

SUBCHAPTER C. PROJECTS

Sec. 12.051. FEDERAL PROJECTS. (a) In this section:

(1) "Federal project" means an engineering undertaking or work to construct, enlarge, or extend a dam, lake, reservoir, or other water-storage or flood-control work or a drainage, reclamation, or canalization undertaking or any combination of these financed in whole or in part with funds of the United States.

(2) "Engineering report" means the plans, data, profiles, maps, estimates, and drawings prepared in connection with a federal project.

(3) "Federal agency" means the Corps of Engineers of the United States Army, the Bureau of Reclamation of the Department of

Interior, the Soil Conservation Service of the Department of Agriculture, the United States Section of the International Boundary and Water Commission, or any other agency of the United States, the function of which includes the conservation, development, retardation by impounding, control, or study of the water resources of Texas or the United States.

(b) When the governor receives an engineering report submitted by a federal agency seeking the governor's approval of a federal project, he shall immediately forward the report to the board for its study concerning the feasibility of the federal project.

(c) The board shall hold a public hearing to receive the views of persons and groups who might be affected by the proposed federal project. The board shall publish notice of the time, date, place, nature, and purpose of the public hearing once each week for two consecutive weeks before the date stated in the notice in a newspaper having general circulation in the section of the state where the federal project is to be located or the work done.

(d) After hearing all the evidence both for and against approval of the federal project, the board shall enter its order approving or disapproving the feasibility of the federal project, and the order shall include the board's reasons for approval or disapproval.

(e) In determining feasibility, the board shall consider, among other relevant factors:

(1) the effect of the federal project on water users on the stream as certified by the commission;

(2) the public interest to be served;

(3) the development of damsites to the optimum potential for water conservation;

(4) the integration of the federal project with other water conservation activities;

(5) the protection of the state's interests in its water resources; and

(6) the engineering practicality of the federal project, including cost of construction, operation, and maintenance.

(f) The board shall forward to the governor a certified copy of its order. The board's finding that the federal project is either feasible or not feasible is final, and the governor shall notify the federal agency that the federal project has been either approved or disapproved.

(g) The provisions of this section do not apply to the state soil conservation board as long as that board is designated by the governor as the authorized state agency having supervisory responsibility to approve or disapprove of projects designed to effectuate watershed-protection and flood-prevention programs initiated in cooperation with the United States Department of Agriculture.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.032, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 20, Sec. 1, eff. Sept. 1, 1987.

Sec. 12.052. DAM SAFETY. (a) The commission shall make and enforce rules and orders and shall perform all other acts necessary to provide for the safe construction, operation, maintenance, repair, removal, and emergency management of dams located in this state. In performing the commission's duties under this subsection, the commission shall identify and focus on the most hazardous dams in the state.

(a-1) The commission shall require the owner or operator of a state-regulated dam that has a spillway with gates used to regulate flood waters to notify local emergency operation centers in downstream communities when spillway releases are made to regulate flood waters, according to the commission's emergency action plan guidelines.

(a-2) Emergency operation centers notified under Subsection (a-1) shall provide notice to the public when a release may contribute to flooding that may result in damage to life and property through all available means and shall include, at a minimum, the following information, if available:

(1) the names of the dam and reservoir;

(2) the communities downstream that may be impacted and estimated time of impact;

(3) the names of affected river basins and tributaries;

(4) the expected duration of the release;

(5) the level of potential flooding according to the National Weather Service River Forecast Center; and

(6) the roads or bridges that are expected to be affected.

(a-3) A notice provided under Subsection (a-2) must include the

following disclaimer: "Actual flood conditions may vary significantly from the alert based on new or changed conditions; advanced alerts of changed conditions may not be possible."

(a-4) Notwithstanding any other defense or immunity that may apply, a notice provided under Subsection (a-1) or (a-2) may not be considered an admission of liability and may not be used as evidence in any suit related to the releases that are the subject of the notice.

(b) Rules and orders made by the commission shall be made after proper notice and hearing as provided in the rules of the commission.

(b-1) The commission may enter into an agreement with an owner of a dam who is required to reevaluate the adequacy of an existing dam or spillway. The agreement may include timelines to achieve compliance with the commission's design criteria and may authorize deferral of compliance with the criteria, as appropriate.

(c) If the owner of a dam that is required to be constructed, reconstructed, repaired, or removed in order to comply with the rules and orders promulgated under Subsection (a) of this section wilfully fails or refuses to comply within the 30-day period following the date of the commission's final, nonappealable order to do so or if a person wilfully fails to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order, he is liable to a penalty of not more than $5,000 a day for each day he continues to violate this section. The state may recover the penalty by suit brought for that purpose in the district court of Travis County.

(d) If the commission determines that the existing condition of the dam is creating or will cause extensive or severe property damage or economic loss to others or is posing an immediate and serious threat to human life or health and that other procedures available to the commission to remedy or prevent the occurrence of the situation will result in unreasonable delay, the commission may issue an emergency order, either mandatory or prohibitory in nature, directing the owner of a dam to repair, modify, maintain, dewater, or remove the dam which the commission determines is unsafe. The emergency order may be issued without notice to the dam owner or with notice the commission considers practicable under the circumstances. The notice does not have to comply with Chapter 2001, Government Code.

(e) If the commission issues an emergency order under authority of this section without notice to the dam owner, the commission shall

fix a time and place for a hearing which shall be held as soon as practicable to affirm, modify, or set aside the emergency order. The notice does not have to comply with Chapter 2001, Government Code. If the nature of the commission's action requires further proceedings, those proceedings shall be conducted as appropriate under Chapter 2001, Government Code.

(e-1) The commission shall exempt an owner of a dam located on private property from meeting requirements related to dam safety if the dam:

(1) at maximum capacity impounds less than 500 acre-feet;

(2) has a hazard classification of low or significant;

(3) is located in a county with a population of less than 350,000; and

(4) is not located inside the corporate limits of a municipality.

(e-2) Notwithstanding Subsection (e-1), an owner of a dam shall comply with operation and maintenance requirements established by commission rule.

(e-3) For purposes of this subsection, the emergency management director for a municipality or county is the person designated that political subdivision's emergency management director by Section 418.1015, Government Code. The commission shall provide a report of a dam that has a hazard classification of high or significant to:

(1) the emergency management director, or the emergency management director's designee, for the municipality or county in which the dam is located; and

(2) the executive director or equivalent position of each council of government or local or regional development council for the area in which the dam is located.

(e-4) The commission shall make a report as described by Subsection (e-3) not later than the 30th day after the date of the designation of a dam as a high or significant hazard classification. The report must include the hazard classification and condition status for each dam that has had a change in hazard classification located in the political subdivision.

(e-5) The commission shall provide a biannual report including condition status and other information on each dam with a hazard classification of high or significant to the emergency management director, or the emergency management director's designee, of each municipality and county and the executive director or equivalent

position of each council of government or local or regional development council in which a dam included in the report is located.

(f) Nothing in this section or in rules or orders made by the commission shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to ownership or operation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.033, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(63), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 3.04, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.07, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 641 (H.B. 677), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 641 (H.B. 677), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 709 (H.B. 137), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1020 (H.B. 26), Sec. 1, eff. September 1, 2019.

SUBCHAPTER D. WATER DISTRICTS

Sec. 12.081. CONTINUING RIGHT OF SUPERVISION OF DISTRICTS AND AUTHORITIES CREATED UNDER ARTICLE III, SECTION 52 AND ARTICLE XVI, SECTION 59 OF THE TEXAS CONSTITUTION. (a) The powers and duties of all districts and authorities created under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution are subject to the continuing right of supervision of the State of Texas by and through the commission or its successor, and this supervision may include but is not limited to the authority to:

(1) inquire into the qualifications of the officers and directors of any district or authority;

(2) require, on its own motion or on complaint by any person, audits or other financial information, inspections, evaluations, and engineering reports;

(3) issue subpoenas for witnesses to carry out its

authority under this subsection;

(4) institute investigations and hearings using examiners appointed by the commission;

(5) issue rules necessary to supervise the districts and authorities, except that such rules shall not apply to water quality ordinances adopted by any river authority which meet or exceed minimum requirements established by the commission;

(6) issue a permit under Chapter 361, Health and Safety Code, notwithstanding a district's rule or objection; and

(7) the right of supervision granted herein shall not apply to matters relating to electric utility operations.

(b) The commission shall prepare and submit to the governor, lieutenant governor, and speaker of the house a report of any findings made under this section.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.034, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 196, Sec. 2, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.283, eff. Sept. 1, 1995.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 608 (S.B. 911), Sec. 1, eff. September 1, 2019.

Sec. 12.082. DUTY TO INVESTIGATE FRESH WATER SUPPLY DISTRICT PROJECTS. (a) In this section:

(1) "District" means fresh water supply district.

(2) "Designated agent" means any licensed engineer selected by the executive director to perform the functions specified in this section.

(b) The commission shall investigate and report on the organization and feasibility of all districts created under Chapter 53 of this code which issue bonds under the provisions of that chapter.

(c) A district that wants to issue bonds for any purpose shall submit to the commission a written application for investigation, together with a copy of the engineer's report and a copy of the data, profiles, maps, plans, and specifications made in connection with the engineer's report.

(d) The executive director or his designated agent shall

examine the application and other information and shall visit the project and carefully inspect it. The executive director or his designated agent may ask for and shall be supplied with additional data and information requisite to a reasonable and careful investigation of the project and proposed improvements.

(e) The executive director or his designated agent shall file with the commission written suggestions for changes and improvements and shall furnish a copy of the suggestions to the board of the district. If the commission finally approves or refuses to approve the project or the issuance of bonds for the improvements it shall make a full written report, file it in its office, and furnish a copy of the report to the board of the district.

(f) During the course of construction of the project and improvements, no substantial alterations shall be made in the plans and specifications without the approval of the executive director. The executive director or his designated agent has full authority to inspect the improvements at any time during construction to determine if the project is being constructed in accordance with approved plans and specifications.

(g) If the executive director finds that the project is not being constructed in accordance with the approved plans and specifications, the executive director immediately shall notify in writing by certified mail each member of the board of the district and its manager. If, within 10 days after the notice is mailed, the board of the district does not take steps to insure that the project is being constructed in accordance with the approved plans and specifications, the executive director shall give written notice of that fact to the attorney general.

(h) After the attorney general receives the notice, he may bring an action for injunctive relief, or he may bring quo warranto proceedings against the directors. Venue for either of these actions is exclusively in the district of Travis County.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.035, eff. Sept. 1, 1985.

Sec. 12.083. DISTRICTS; CREATION, INVESTIGATIONS AND BONDS. (a) The commission succeeds to the duties and responsibilities of

the Texas Water Rights Commission with regard to the creation of districts as defined by Section 50.001(1) of this code and to approve or disapprove the issuance of the bonds of all such districts.

(b) The executive director shall investigate and report on the organization and feasibility of all districts as defined by Section 50.001(1) of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. FEES

Sec. 12.112. FEES: EXEMPTIONS. (a) The commission, the board, and the Parks and Wildlife Commission are exempted from payment of any filing, recording, or use fees required by this code.

(b) The board is exempt from payment of any other fees required by this code or any other statute relating to applications for water rights or amendments thereto or relating to water resources administration to the extent the board has not contracted for the sale of water under a water right on which such fees are based.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.036, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 647, Sec. 4, eff. Aug. 30, 1993.

Sec. 12.113. DISPOSITION OF FEES, ETC. (a) The commission shall immediately deposit in the State Treasury the fees and charges it collects.

(b) The commission shall deposit all costs collected under Subchapter G, Chapter 11 of this code in the State Treasury to the credit of the watermaster administration account, from which the commission shall pay all expenses necessary to efficiently administer and perform the duties described in Sections 11.325 through 11.335 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.036, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 333, Sec. 4, eff. Sept. 1, 1997.

Sec. 12.114. DISPOSITION OF FEES PENDING DETERMINATION. The commission shall hold all fees, except filing fees, which are paid with an application until the commission finally determines whether the application should be granted. If the application is not granted, the commission shall return the fees to the applicant.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.036, eff. Sept. 1, 1985.

CHAPTER 13. WATER RATES AND SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 13.001. LEGISLATIVE POLICY AND PURPOSE. (a) This chapter is adopted to protect the public interest inherent in the rates and services of retail public utilities.

(b) The legislature finds that:

(1) retail public utilities are by definition monopolies in the areas they serve;

(2) the normal forces of competition that operate to regulate prices in a free enterprise society do not operate for the reason stated in Subdivision (1) of this subsection; and

(3) retail public utility rates, operations, and services are regulated by public agencies, with the objective that this regulation will operate as a substitute for competition.

(c) The purpose of this chapter is to establish a comprehensive regulatory system that is adequate to the task of regulating retail public utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the retail public utilities.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.002. DEFINITIONS. In this chapter:

(1) "Affected person" means any landowner within an area for which a certificate of public convenience and necessity is filed, any retail public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates

are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(1-a) "Landowner," "owner of a tract of land," and "owners of each tract of land" include multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

(2) "Affiliated interest" or "affiliate" means:

(A) any person or corporation owning or holding directly or indirectly five percent or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of five percent or more of the voting securities of a utility;

(C) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly five percent or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of five percent of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of a public utility;

(F) any person or corporation that the utility commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the utility commission, after notice and hearing, determines is exercising substantial influence over the policies and actions of the utility in

conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(3) "Allocations" means, for all retail public utilities, the division of plant, revenues, expenses, taxes and reserves between municipalities or between municipalities and unincorporated areas, where those items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas.

(4) "Board" means the Texas Water Development Board.

(4-a) "Class A utility" means a public utility that provides retail water or sewer utility service through 10,000 or more taps or connections.

(4-b) "Class B utility" means a public utility that provides retail water or sewer utility service through 2,300 or more taps or connections but fewer than 10,000 taps or connections.

(4-c) "Class C utility" means a public utility that provides retail water or sewer utility service through 500 or more taps or connections but fewer than 2,300 taps or connections.

(4-d) "Class D utility" means a public utility that provides retail water or sewer utility service through fewer than 500 taps or connections.

(5) "Commission" means the Texas Commission on Environmental Quality.

(6) "Commissioner" means a member of the commission.

(7) "Corporation" means any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships but does not include municipal corporations unless expressly provided in this chapter.

(8) "Executive director" means the executive director of the commission.

(9) "Facilities" means all the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

(10) "Incident of tenancy" means water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

(11) "Member" means a person who holds a membership in a water supply or sewer service corporation and is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(12) "Municipality" means cities existing, created, or organized under the general, home-rule, or special laws of this state.

(13) "Municipally owned utility" means any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(13-a) "Municipal utility district" means a political subdivision of this state operating under Chapter 54.

(14) "Order" means the whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the regulatory authority in a matter other than rulemaking, but including issuance of certificates of convenience and necessity and rate setting.

(15) "Person" includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations.

(16) "Proceeding" means any hearing, investigation, inquiry, or other fact-finding or decision-making procedure under this chapter and includes the denial of relief or the dismissal of a complaint.

(17) "Rate" means every compensation, tariff, charge, fare, toll, rental, and classification or any of those items demanded, observed, charged, or collected whether directly or indirectly by any retail public utility for any service, product, or commodity described in Subdivision (23) of this section and any rules, regulations, practices, or contracts affecting that compensation,

tariff, charge, fare, toll, rental, or classification.

(18) "Regulatory authority" means, in accordance with the context in which it is found, the commission, the utility commission, or the governing body of a municipality.

(19) "Retail public utility" means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(20) "Retail water or sewer utility service" means potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(21) "Service" means any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under this chapter to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(22) "Test year" means the most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a retail public utility are available.

(22-a) "Utility commission" means the Public Utility Commission of Texas.

(23) "Water and sewer utility," "public utility," or "utility" means any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or

tenancy when that service or commodity is not resold to or used by others.

(24) "Water supply or sewer service corporation" means a nonprofit corporation organized and operating under Chapter 67 that provides potable water service or sewer service for compensation and that has adopted and is operating in accordance with by-laws or articles of incorporation which ensure that it is member-owned and member-controlled. The term does not include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold.

(25) "Wholesale water or sewer service" means potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

(26) "Affected county" is a county to which Subchapter B, Chapter 232, Local Government Code, applies.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 1, 2, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.058, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 400, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 979, Sec. 6, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 6.02, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.52, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 404, Sec. 29, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.05, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.08, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 8, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 948 (S.B. 1842), Sec. 1, eff.

September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 1, eff. September 1, 2019.

Sec. 13.003. APPLICABILITY OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. Chapter 2001, Government Code applies to all proceedings under this chapter except to the extent inconsistent with this chapter.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a) Notwithstanding any other law, the utility commission has the same jurisdiction over a water supply or sewer service corporation that the utility commission has under this chapter over a water and sewer utility if the utility commission finds that the water supply or sewer service corporation:

(1) is failing to conduct annual or special meetings in compliance with Section 67.007; or

(2) is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed by Sections 13.002(11) and (24).

(b) If the water supply or sewer service corporation voluntarily converts to a special utility district operating under Chapter 65, the utility commission's jurisdiction provided by this section ends.

Added by Acts 2005, 79th Leg., Ch. 1057 (H.B. 1358), Sec. 1.01, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.09, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 9, eff. September 1, 2013.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 13.011. EMPLOYEES. (a) The utility commission and the executive director of the commission, subject to approval, as applicable, by the utility commission or the commission, shall employ any engineering, accounting, and administrative personnel necessary to carry out each agency's powers and duties under this chapter.

(b) The executive director and the commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the commission under this subchapter. The utility commission and the utility commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the utility commission under this subchapter. The duties of the utility commission, the executive director, and the staff of the utility commission or commission, as appropriate, include:

(1) accumulation of evidence and other information from water and sewer utilities, from the utility commission or commission, as appropriate, and the governing body of the respective agency, and from other sources for the purposes specified by this chapter;

(2) preparation and presentation of evidence before the utility commission or commission, as appropriate, or its appointed examiner in proceedings;

(3) conducting investigations of water and sewer utilities under the jurisdiction of the utility commission or commission, as appropriate;

(4) preparation of recommendations that the utility commission or commission, as appropriate, undertake an investigation of any matter within its jurisdiction;

(5) preparation of recommendations and a report for inclusion in the annual report of the utility commission or commission, as appropriate;

(6) protection and representation of the public interest before the utility commission or commission, as appropriate; and

(7) other activities that are reasonably necessary to enable the utility commission and the executive director and the staff of the utility commission or commission, as appropriate, to perform their duties.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.10, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 10, eff. September 1, 2013.

Sec. 13.014. ATTORNEY GENERAL TO REPRESENT COMMISSION OR UTILITY COMMISSION. The attorney general shall represent the commission or the utility commission under this chapter in all matters before the state courts and any court of the United States.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.11, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 11, eff. September 1, 2013.

Sec. 13.015. INFORMAL PROCEEDING. A proceeding involving a retail public utility as defined by Section 13.002 of this code may be an informal proceeding, except that the proceeding is subject to the public notice requirements of this chapter and the rules and orders of the regulatory authority involved.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 3, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 3, eff. Sept. 1, 1989.

Sec. 13.016. RECORD OF PROCEEDINGS; RIGHT TO HEARING. A record shall be kept of all proceedings before the regulatory authority, unless all parties waive the keeping of the record, and all the parties are entitled to be heard in person or by attorney.

Added by Acts 1987, 70th Leg., ch. 539, Sec. 4, eff. Sept. 1, 1987.

Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL; POWERS AND DUTIES. (a) In this section, "counsellor" and "office" have the

meanings assigned by Section 11.003, Utilities Code.

(b) The independent Office of Public Utility Counsel represents the interests of residential and small commercial consumers under this chapter. The office:

(1) shall assess the effect of utility rate changes and other regulatory actions on residential consumers in this state;

(2) shall advocate in the office's own name a position determined by the counsellor to be most advantageous to a substantial number of residential consumers;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of:

(A) residential consumers, as a class, in any proceeding before the utility commission, including an alternative dispute resolution proceeding; and

(B) small commercial consumers, as a class, in any proceeding in which the counsellor determines that small commercial consumers are in need of representation, including an alternative dispute resolution proceeding;

(4) may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding:

(A) that involves an action taken by an administrative agency in a proceeding, including an alternative dispute resolution proceeding, in which the counsellor is authorized to appear; or

(B) in which the counsellor determines that residential consumers or small commercial consumers are in need of representation;

(5) is entitled to the same access as a party, other than utility commission staff, to records gathered by the utility commission under Section 13.133;

(6) is entitled to discovery of any nonprivileged matter that is relevant to the subject matter of a proceeding or petition before the utility commission;

(7) may represent an individual residential or small commercial consumer with respect to the consumer's disputed complaint concerning retail utility services that is unresolved before the utility commission;

(8) may recommend legislation to the legislature that the office determines would positively affect the interests of residential and small commercial consumers; and

(9) may conduct consumer outreach and education programs

for residential and small commercial consumers.

(c) This section does not:

(1) affect a duty the office is required to perform under other law; or

(2) limit the authority of the utility commission to represent residential or small commercial consumers.

(d) The appearance of the counsellor in a proceeding does not preclude the appearance of other parties on behalf of residential or small commercial consumers. The counsellor may not be grouped with any other party.

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.12, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 12, eff. September 1, 2013.

SUBCHAPTER C. JURISDICTION

Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND COMMISSION; RULES; HEARINGS. (a) The utility commission may regulate and supervise the business of each water and sewer utility within its jurisdiction, including ratemaking and other economic regulation. The commission may regulate water and sewer utilities within its jurisdiction to ensure safe drinking water and environmental protection. The utility commission and the commission may do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of these powers and jurisdiction. The utility commission may consult with the commission as necessary in carrying out its duties related to the regulation of water and sewer utilities.

(b) The commission and the utility commission shall adopt and enforce rules reasonably required in the exercise of powers and jurisdiction of each agency, including rules governing practice and procedure before the commission and the utility commission.

(c) The commission and the utility commission may call and hold hearings, administer oaths, receive evidence at hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering this chapter or the rules, orders, or other actions of the commission or the utility commission.

(c-1) In addition to the powers and duties of the State Office of Administrative Hearings under Title 2, Utilities Code, the utility commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to issue interlocutory orders related to interim rates under this chapter.

(d) In accordance with Subchapter K-1, the utility commission may issue emergency orders, with or without a hearing:

(1) to compel a retail public utility that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the retail public utility's actions or failure to act; and

(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred.

(e) The utility commission may establish reasonable compensation for the temporary service required under Subsection (d)(2) and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(f) If an order is issued under Subsection (d) without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the utility commission.

(g) The regulatory assessment required by Section 5.701(n) is not a rate and is not reviewable by the utility commission under Section 13.043. The commission has the authority to enforce payment and collection of the regulatory assessment.

(h) In accordance with Subchapter L, Chapter 5, the commission may issue emergency orders, with or without a hearing:

(1) to compel a retail public utility that has obtained a certificate of public convenience and necessity to provide water or sewer service, or both, that complies with all statutory and regulatory requirements of the commission if necessary to ensure safe drinking water or environmental protection; and

(2) to compel a retail public utility to provide an

emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if necessary to ensure safe drinking water or environmental protection.

(i) On request by the commission, the utility commission may, on an expedited basis, establish reasonable compensation for the temporary service required under Subsection (h)(2) and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(j) If an order is issued under Subsection (h) without a hearing, notice of a hearing under Section 5.504 to affirm, modify, or set aside the order is adequate if the notice is mailed or hand delivered to the last known address of the retail public utility's headquarters.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 5, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 4, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 4.02, eff. Sept. 1, 1991. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.13, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 13, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 3, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 2, eff. September 1, 2019.

Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the limitations imposed in this chapter and for the purpose of regulating rates and services so that those rates may be fair, just, and reasonable and the services adequate and efficient, the governing body of each municipality has exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits.

(b) The governing body of a municipality by ordinance may elect to have the utility commission exercise exclusive original

jurisdiction over the utility rates, operation, and services of utilities, within the incorporated limits of the municipality.

(c) The governing body of a municipality that surrenders its jurisdiction to the utility commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the utility commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding before the utility commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.

(d) The utility commission shall have exclusive appellate jurisdiction to review orders or ordinances of those municipalities as provided in this chapter.

(e) The utility commission shall have exclusive original jurisdiction over water and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this chapter.

(f) This subchapter does not give the utility commission power or jurisdiction to regulate or supervise the rates or service of a utility owned and operated by a municipality, directly or through a municipally owned corporation, within its corporate limits or to affect or limit the power, jurisdiction, or duties of a municipality that regulates land and supervises water and sewer utilities within its corporate limits, except as provided by this code.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 6, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 5, eff. Sept. 1, 1989. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.14, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 14, eff. September 1, 2013.

Sec. 13.0421. RATES CHARGED BY CERTAIN MUNICIPALLY OWNED UTILITIES. (a) This section applies to a municipally owned water and sewer utility that on January 1, 1989, required some or all of

its wholesale customers to assess a surcharge for service against residential customers who reside outside the municipality's municipal boundaries.

(b) A municipality may not require a municipal utility district to assess a surcharge against users of water or sewer service prior to the annexation of the municipal utility district.

Added by Acts 1989, 71st Leg., ch. 567, Sec. 8, eff. Sept. 1, 1989.

Sec. 13.043. APPELLATE JURISDICTION. (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the utility commission. This subsection does not apply to a municipally owned utility. An appeal under this subsection must be initiated within 90 days after the date of notice of the final decision by the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with the utility commission and by serving copies on all parties to the original rate proceeding. The utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken and may include reasonable expenses incurred in the appeal proceedings. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the utility provider and may order refunds or allow a surcharge to recover lost revenues. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings.

(b) Ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the utility commission:

(1) a nonprofit water supply or sewer service corporation created and operating under Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality;

(4) a district or authority created under Article III,

Section 52, or Article XVI, Section 59, of the Texas Constitution that provides water or sewer service to household users; and

(5) a utility owned by an affected county, if the ratepayer's rates are actually or may be adversely affected. For the purposes of this section ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries.

(b-1) A municipally owned utility shall:

(1) disclose to any person, on request, the number of ratepayers who reside outside the corporate limits of the municipality; and

(2) provide to any person, on request, a list of the names and addresses of the ratepayers who reside outside the corporate limits of the municipality.

(b-2) If a ratepayer has requested that a municipally owned utility keep the ratepayer's personal information confidential under Section 182.052, Utilities Code, the municipally owned utility may not disclose the address of the ratepayer under Subsection (b-1)(2).

(b-3) The municipally owned utility may not charge a fee for disclosing the information under Subsection (b-1)(1). The municipally owned utility may charge a reasonable fee for providing information under Subsection (b-1)(2). The municipally owned utility shall provide information requested under Subsection (b-1)(1) by telephone or in writing as preferred by the person making the request.

(c) An appeal under Subsection (b) must be initiated by filing a petition for review with the utility commission and the entity providing service within 90 days after the effective day of the rate change or, if appealing under Subdivision (b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. The petition must be signed by the lesser of 10,000 or 10 percent of those ratepayers whose rates have been changed and who are eligible to appeal under Subsection (b).

(d) In an appeal under Subsection (b) of this section, each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of a person, in whose name utility service is carried.

(e) In an appeal under Subsection (b), the utility commission

shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the service provider, may order refunds or allow a surcharge to recover lost revenues, and may allow recovery of reasonable expenses incurred by the retail public utility in the appeal proceedings. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings. The rates established by the utility commission in an appeal under Subsection (b) remain in effect until the first anniversary of the effective date proposed by the retail public utility for the rates being appealed or until changed by the service provider, whichever date is later, unless the utility commission determines that a financial hardship exists.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the utility commission a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after the date of notice of the decision is received from the provider of water or sewer service by the filing of a petition by the retail public utility.

(g) An applicant for service from an affected county or a water supply or sewer service corporation may appeal to the utility commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. In addition to the factors specified under Subsection (j), in an appeal brought under this subsection the utility commission shall determine whether the amount paid by the applicant is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant. If the utility commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid for that applicant. An appeal under this subsection must be initiated within 90 days after the date written notice is provided to

the applicant or member of the decision of an affected county or water supply or sewer service corporation relating to the applicant's initial request for that service. A determination made by the utility commission on an appeal under this subsection is binding on all similarly situated applicants for service, and the utility commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) The utility commission may, on a motion by the utility commission or by the appellant under Subsection (a), (b), or (f), establish interim rates to be in effect until a final decision is made.

(i) The governing body of a municipally owned utility or a political subdivision, within 60 days after the date of a final decision on a rate change, shall provide individual written notice to each ratepayer eligible to appeal who resides outside the boundaries of the municipality or the political subdivision. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained. The governing body of a municipally owned utility or a political subdivision may provide the notice electronically if the utility or political subdivision has access to a ratepayer's e-mail address.

(j) In an appeal under this section, the utility commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers. The utility commission shall use a methodology that preserves the financial integrity of the retail public utility. For agreements between municipalities the utility commission shall consider the terms of any wholesale water or sewer service agreement in an appellate rate proceeding.

(k) Not later than the 30th day after the date of a final decision on a rate change, the commissioners court of an affected county shall provide written notice to each ratepayer eligible to appeal. The notice must include the effective date of the new rates, the new rates, and the location where additional information on rates may be obtained.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 7, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 6, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 852, Sec. 2, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 549, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 400, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 979, Sec. 7, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 18.53, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 9.01, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.15, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 15, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 4, eff. September 1, 2015.

Sec. 13.044. RATES CHARGED BY MUNICIPALITY TO CERTAIN SPECIAL DISTRICTS. (a) This section applies to rates charged by a municipality for water or sewer service to a district created pursuant to Article XVI, Section 59, of the Texas Constitution, or to the residents of such district, which district is located within the corporate limits or the extraterritorial jurisdiction of the municipality and the resolution, ordinance, or agreement of the municipality consenting to the creation of the district requires the district to purchase water or sewer service from the municipality.

(b) Notwithstanding the provisions of any resolution, ordinance, or agreement, a district may appeal the rates imposed by the municipality by filing a petition with the utility commission. The utility commission shall hear the appeal de novo and the municipality shall have the burden of proof to establish that the rates are just and reasonable. The utility commission shall fix the rates to be charged by the municipality and the municipality may not increase such rates without the approval of the utility commission.

Added by Acts 1989, 71st Leg., ch. 567, Sec. 7, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.16, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 16, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 849 (H.B. 2369), Sec. 2, eff. June 15, 2017.

Sec. 13.0441. FEES CHARGED BY MUNICIPALITY TO PUBLIC SCHOOL DISTRICTS. (a) This section applies only to fees charged by a municipality for water or sewer service to a public school district.

(b) Notwithstanding the provisions of a resolution, ordinance, or agreement, a public school district charged a fee that violates Section 13.088 may appeal the charge by filing a petition with the utility commission. The utility commission shall hear the appeal de novo, and the municipality charging the fee has the burden of proof to establish that the fee complies with Section 13.088. The utility commission shall fix the fees to be charged by the municipality in accordance with this chapter, including Section 13.088.

Added by Acts 2017, 85th Leg., R.S., Ch. 849 (H.B. 2369), Sec. 3, eff. June 15, 2017.

Sec. 13.045. NOTIFICATION REGARDING USE OF REVENUE. At least annually and before any rate increase, a municipality shall notify in writing each water and sewer retail customer of any service or capital expenditure not water or sewer related funded in whole or in part by customer revenue.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.28, eff. Sept. 1, 1997.

Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The utility commission by rule shall establish a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate for the services provided to the customers of the nonfunctioning system and to bill the customers for the

services at that rate immediately to recover service costs.

(b) The rules must provide a streamlined process that the retail public utility that takes over the nonfunctioning system may use to apply to the utility commission for a ruling on the reasonableness of the rates the utility is charging under Subsection (a). The process must allow for adequate consideration of costs for interconnection or other costs incurred in making services available and of the costs that may necessarily be incurred to bring the nonfunctioning system into compliance with utility commission and commission rules.

(c) The utility commission shall provide a reasonable period for the retail public utility that takes over the nonfunctioning system to bring the nonfunctioning system into compliance with utility commission and commission rules during which the utility commission or the commission may not impose a penalty for any deficiency in the system that is present at the time the utility takes over the nonfunctioning system. The utility commission must consult with the utility before determining the period and may grant an extension of the period for good cause.

(d) At the time the utility commission approves the acquisition of a nonfunctioning retail water or sewer utility service provider under Section 13.301, the utility commission shall:

(1) determine the duration of the temporary rates for the retail public utility, which must be for a reasonable period; and

(2) rule on the reasonableness of the temporary rates under Subsection (b) if the utility commission did not make a ruling before the application was filed under Section 13.301.

Added by Acts 2007, 80th Leg., R.S., Ch. 599 (H.B. 149), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.17, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 17, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 3, eff. September 1, 2019.

SUBCHAPTER D. MUNICIPALITIES AND COUNTIES

Sec. 13.081. FRANCHISES. This chapter may not be construed as in any way limiting the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for their use, but no provision of any franchise agreement may limit or interfere with any power conferred on the utility commission by this chapter. If a municipality performs regulatory functions under this chapter, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this chapter.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.18, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 18, eff. September 1, 2013.

Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT AREAS. (a) Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the utility commission has assumed jurisdiction over the respective utility pursuant to this chapter.

(b) If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the utility commission under this chapter to the extent that this chapter applies to local service, and the municipality shall have, regarding service within its boundaries, the right to exercise the same regulatory powers under the same standards and rules as the utility commission or other standards and rules not inconsistent with them. The utility commission's rules relating to service and response to requests for service for utilities operating within a municipality's corporate limits apply unless the municipality adopts its own rules.

(c) Notwithstanding any election, the utility commission may consider water and sewer utilities' revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas and

may also exercise the powers conferred necessary to give effect to orders under this chapter for the benefit of nonexempt areas. Likewise, in fixing rates and charges in the exempt area, the governing body may consider water and sewer utilities' revenues and return on investment in nonexempt areas.

(d) Utilities serving exempt areas are subject to the reporting requirements of this chapter. Those reports and tariffs shall be filed with the governing body of the municipality as well as with the utility commission.

(e) This section does not limit the duty and power of the utility commission to regulate service and rates of municipally regulated water and sewer utilities for service provided to other areas in Texas.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 9, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.19, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 19, eff. September 1, 2013.

Sec. 13.083. RATE DETERMINATION. A municipality regulating its water and sewer utilities under this chapter shall require from those utilities all necessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for this determination shall be based on the procedures and requirements of this chapter, and the municipality shall retain any personnel necessary to make the determination of reasonable rates required under this chapter.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Sec. 13.084. AUTHORITY OF GOVERNING BODY; COST REIMBURSEMENT. The governing body of any municipality or the commissioners court of an affected county shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any

combination of these experts to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation on water and sewer utility ratemaking proceedings. The water and sewer utility engaged in those proceedings shall be required to reimburse the governing body or the commissioners court for the reasonable costs of those services and shall be allowed to recover those expenses through its rates with interest during the period of recovery.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 10, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 979, Sec. 9, eff. June 16, 1995.

Sec. 13.085. ASSISTANCE BY UTILITY COMMISSION. On request, the utility commission may advise and assist municipalities and affected counties in connection with questions and proceedings arising under this chapter. This assistance may include aid to municipalities or an affected county in connection with matters pending before the utility commission, the courts, the governing body of any municipality, or the commissioners court of an affected county, including making members of the staff available to them as witnesses and otherwise providing evidence.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 979, Sec. 10, eff. June 16, 1995.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.20, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 20, eff. September 1, 2013.

Sec. 13.086. FAIR WHOLESALE RATES FOR WHOLESALE WATER SALES TO A WATER DISTRICT. (a) A municipality that makes a wholesale sale of water to a special district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, and that operates under Title 4 or under Chapter 36 shall determine the rates for that sale on the same basis as for other similarly situated wholesale purchasers of the municipality's water.

(b) This section does not apply to a sale of water under a contract executed before the effective date of this section.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.29, eff. Sept. 1, 1997.

Sec. 13.087. MUNICIPAL RATES FOR CERTAIN RECREATIONAL VEHICLE PARKS. (a) In this section:

(1) "Nonsubmetered master metered utility service" means potable water service that is master metered but not submetered and wastewater service that is based on master metered potable water service.

(2) "Recreational vehicle" includes a:

(A) "house trailer" as that term is defined by Section 501.002, Transportation Code; and

(B) "towable recreational vehicle" as that term is defined by Section 541.201, Transportation Code.

(3) "Recreational vehicle park" means a commercial property:

(A) that is designed primarily for recreational vehicle transient guest use; and

(B) for which fees for site service connections for recreational vehicles, as defined by Section 522.004(b), Transportation Code, are paid daily, weekly, or monthly.

(b) A municipally owned utility that provides nonsubmetered master metered utility service to a recreational vehicle park shall determine the rates for that service on the same basis the utility uses to determine the rates for other commercial businesses that serve transient customers and receive nonsubmetered master metered utility service from the utility.

(b-1) A municipally owned utility that provides nonsubmetered master metered utility service to a recreational vehicle park may not charge a recreational vehicle park a fee that the utility does not charge other commercial businesses that serve transient customers and receive nonsubmetered master metered utility service from the utility.

(c) Notwithstanding any other provision of this chapter, the utility commission has jurisdiction to enforce this section.

Added by Acts 2005, 79th Leg., Ch. 523 (H.B. 841), Sec. 1, eff.

September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.21, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 21, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 613 (S.B. 1268), Sec. 6, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 991 (H.B. 2152), Sec. 1, eff. September 1, 2013.

Sec. 13.088. MUNICIPAL FEES FOR PUBLIC SCHOOL DISTRICTS. A municipally owned utility that provides retail water or sewer utility service to a public school district may not charge the district a fee based on the number of district students or employees in addition to the rates the utility charges the district for the service.

Added by Acts 2017, 85th Leg., R.S., Ch. 849 (H.B. 2369), Sec. 4, eff. June 15, 2017.

SUBCHAPTER E. RECORDS, REPORTS, INSPECTIONS, RATES, AND SERVICES

Sec. 13.131. RECORDS OF UTILITY; RATES, METHODS, AND ACCOUNTS. (a) Every water and sewer utility shall keep and render to the regulatory authority in the manner and form prescribed by the utility commission uniform accounts of all business transacted. The utility commission may also prescribe forms of books, accounts, records, and memoranda to be kept by those utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of money, and any other forms, records, and memoranda that in the judgment of the utility commission may be necessary to carry out this chapter.

(b) In the case of a utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by that agency may be considered a sufficient compliance with the system prescribed by the utility commission. However, the utility commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of

accounts and the forms of books, accounts, records, and memoranda prescribed by the utility commission for a utility or class of utilities may not conflict or be inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

(c) The utility commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each utility and shall require every utility to carry a proper and adequate depreciation account in accordance with those rates and methods and with any other rules the utility commission prescribes. Rules adopted under this subsection must require the book cost less net salvage of depreciable utility plant retired to be charged in its entirety to the accumulated depreciation account in a manner consistent with accounting treatment of regulated electric and gas utilities in this state. Those rates, methods, and accounts shall be utilized uniformly and consistently throughout the rate-setting and appeal proceedings.

(d) Every utility shall keep separate accounts to show all profits or losses resulting from the sale or lease of appliances, fixtures, equipment, or other merchandise. A profit or loss may not be taken into consideration by the regulatory authority in arriving at any rate to be charged for service by a utility to the extent that the merchandise is not integral to the provision of utility service.

(e) Every utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the utility commission and to comply with all directions of the regulatory authority relating to those books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

(f) In determining the allocation of tax savings derived from application of methods such as liberalized depreciation and amortization and the investment tax credit, the regulatory authority shall equitably balance the interests of present and future customers and shall apportion those benefits between consumers and the utilities accordingly. If any portion of the investment tax credit has been retained by a utility, that amount shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied to the extent allowed by the Internal Revenue Code.

(g) Repealed by Acts 1987, 70th Leg., ch. 539, Sec. 32, eff.

Sept. 1, 1987.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 32, eff. Sept. 1, 1987.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1242 (S.B. 2306), Sec. 1, eff. June 19, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.22, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 22, eff. September 1, 2013.

Sec. 13.132. POWERS OF UTILITY COMMISSION. (a) The utility commission may:

(1) require that water and sewer utilities report to it any information relating to themselves and affiliated interests both inside and outside this state that it considers useful in the administration of this chapter, including any information relating to a transaction between the utility and an affiliated interest inside or outside this state, to the extent that the transaction is subject to the utility commission's jurisdiction;

(2) establish forms for all reports;

(3) determine the time for reports and the frequency with which any reports are to be made;

(4) require that any reports be made under oath;

(5) require that a copy of any contract or arrangement between any utility and any affiliated interest be filed with it and require that such a contract or arrangement that is not in writing be reduced to writing;

(6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it; and

(7) require that a copy of annual reports showing all payments of compensation, other than salary or wages subject to the withholding of federal income tax, made to residents of Texas, or with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body be filed with it.

(b) On the request of the governing body of any municipality, the utility commission may provide sufficient staff members to advise and consult with the municipality on any pending matter.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.23, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 23, eff. September 1, 2013.

Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On request, the utility commission shall provide, at a reasonable cost, electronic copies of or Internet access to all information provided to the utility commission under Sections 13.016 and 13.043 and Subchapter F to the extent that the information is available and is not confidential. Copies of all information provided to the utility commission shall be provided to the Office of Public Utility Counsel, on request, at no cost to the office.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 7.01, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.24, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 24, eff. September 1, 2013.

Sec. 13.133. INSPECTIONS; EXAMINATION UNDER OATH; COMPELLING PRODUCTION OF RECORDS; INQUIRY INTO MANAGEMENT AND AFFAIRS. (a) Any regulatory authority and, when authorized by the regulatory authority, its counsel, agents, and employees may, at reasonable times and for reasonable purposes, inspect and obtain copies of the papers, books, accounts, documents, and other business records and inspect the plant, equipment, and other property of any utility within its jurisdiction. The regulatory authority may examine under oath or may authorize the person conducting the investigation to examine under oath any officer, agent, or employee of any utility in

connection with the investigation.

(b) The regulatory authority may require, by order or subpoena served on any utility, the production within this state at the time and place it may designate of any books, accounts, papers, or records kept by that utility outside the state or verified copies of them if the regulatory authority so orders. A utility failing or refusing to comply with such an order or subpoena violates this chapter.

(c) A member, agent, or employee of the regulatory authority may enter the premises occupied by a utility to make inspections, examinations, and tests and to exercise any authority provided by this chapter.

(d) A member, agent, or employee of the regulatory authority may act under this section only during reasonable hours and after giving reasonable notice to the utility.

(e) The utility is entitled to be represented when inspections, examinations, and tests are made on its premises. Reasonable time for the utility to secure a representative shall be allowed before beginning an inspection, examination, or test.

(f) The regulatory authority may inquire into the management and affairs of all utilities and shall keep itself informed as to the manner and method in which they are conducted and may obtain all information to enable it to perform management audits. The utility shall report to the regulatory authority on the status of the implementation of the recommendations of the audit and shall file subsequent reports at the times the regulatory authority considers appropriate.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 11, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.25, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 25, eff. September 1, 2013.

Sec. 13.134. REPORT OF ADVERTISING OR PUBLIC RELATIONS EXPENSES. (a) The regulatory authority may require an annual report from each utility company of all its expenditures for business gifts

and entertainment and institutional, consumption-inducing, and other advertising or public relations expenses.

(b) The regulatory authority shall not allow as costs or expenses for ratemaking purposes any of the expenditures that the regulatory authority determines not to be in the public interest. The cost of legislative advocacy expenses shall not in any case be allowed as costs or expenses for ratemaking purposes.

(c) Reasonable charitable or civic contributions may be allowed not to exceed the amount approved by the regulatory authority.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Sec. 13.135. UNLAWFUL RATES, RULES, AND REGULATIONS. A utility may not charge, collect, or receive any rate for utility service or impose any rule or regulation other than as provided in this chapter.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Sec. 13.136. FILING TARIFFS OF RATES, RULES, AND REGULATIONS; ANNUAL FINANCIAL REPORT. (a) Every utility shall file with each regulatory authority tariffs showing all rates that are subject to the original or appellate jurisdiction of the regulatory authority and that are in force at the time for any utility service, product, or commodity offered. Every utility shall file with and as a part of those tariffs all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished.

(b) The utility commission by rule shall require each utility to annually file a service, financial, and normalized earnings report in a form and at times specified by utility commission rule. The report must include information sufficient to enable the utility commission to properly monitor utilities in this state. The utility commission shall make available to the public information in the report the utility does not file as confidential.

(b-1) The utility commission shall provide copies of a report described by Subsection (b) that include information filed as confidential to the Office of Public Utility Counsel on request, at no cost to the office.

(c) Every water supply or sewer service corporation shall file with the utility commission tariffs showing all rates that are subject to the appellate jurisdiction of the utility commission and that are in force at the time for any utility service, product, or commodity offered. Every water supply or sewer service corporation shall file with and as a part of those tariffs all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished. The filing required under this subsection shall be for informational purposes only.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 8, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 12, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 3, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.26, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 26, eff. September 1, 2013.

Sec. 13.137. OFFICE AND OTHER BUSINESS LOCATIONS OF UTILITY; RECORDS; REMOVAL FROM STATE. (a) Every utility shall:

(1) make available and notify its customers of a business location where its customers may make payments to prevent disconnection of or to restore service:

(A) in each county in which the utility provides service; or

(B) not more than 20 miles from the residence of any residential customer if there is no location to receive payments in the county; and

(2) have an office in a county of this state or in the immediate area in which its property or some part of its property is located in which it shall keep all books, accounts, records, and memoranda required by the utility commission to be kept in this state.

(b) The utility commission by rule may provide for waiving the requirements of Subsection (a)(1) for a utility for which meeting those requirements would cause a rate increase or otherwise harm or inconvenience customers. The rules must provide for an additional 14

days to be given for a customer to pay before a utility that is granted a waiver may disconnect service for late payment.

(c) Books, accounts, records, or memoranda required by the regulatory authority to be kept in the state may not be removed from the state, except on conditions prescribed by the utility commission.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 13, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 966, Sec. 10.01, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.27, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 27, eff. September 1, 2013.

Sec. 13.138. COMMUNICATIONS BY UTILITIES WITH REGULATORY AUTHORITY; REGULATIONS AND RECORDS. The regulatory authority may prescribe regulations governing communications by utilities and their affiliates and their representatives with the regulatory authority or any member or employee of the regulatory authority.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 14, eff. Sept. 1, 1989.

Sec. 13.139. STANDARDS OF SERVICE. (a) Every retail public utility that possesses or is required to possess a certificate of public convenience and necessity and every district and affected county that furnishes retail water or sewer utility service, shall furnish the service, instrumentalities, and facilities as are safe, adequate, efficient, and reasonable.

(b) The governing body of a municipality, as the regulatory authority for public utilities operating within its corporate limits, and the utility commission or the commission as the regulatory authority for public utilities operating outside the corporate limits of any municipality, after reasonable notice and hearing on its own motion, may:

(1) ascertain and fix just and reasonable standards,

classifications, regulations, service rules, minimum service standards or practices to be observed and followed with respect to the service to be furnished;

(2) ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, or other condition pertaining to the supply of the service;

(3) prescribe reasonable regulations for the examination and testing of the service and for the measurement of service; and

(4) establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments, and equipment used for the measurement of any utility service.

(c) Any standards, classifications, regulations, or practices observed or followed by any utility may be filed by it with the regulatory authority and shall continue in force until amended by the utility or until changed by the regulatory authority in accordance with this section.

(d) Not later than the 90th day after the date on which a retail public utility that has a certificate of public convenience and necessity reaches 85 percent of its capacity, as compared to the commission's minimum capacity requirements for a public drinking water system, the retail public utility shall submit to the executive director a planning report that includes details on how the retail public utility will provide the expected service to the remaining areas within the boundaries of its certificated area. The executive director may waive the reporting requirement if the executive director finds that the projected growth of the area will not require the utility to exceed its capacity. The commission by rule may require the submission of revised reports at specified intervals.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 15, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 4, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.285, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 400, Sec. 3, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 979, Sec. 11, eff. June 16, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.28, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 28, eff.

September 1, 2013.

Sec. 13.1395. STANDARDS OF EMERGENCY OPERATIONS. (a) In this section:

(1) "Affected utility" means a retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer:

(A) in a county with a population of 3.3 million or more; or

(B) in a county with a population of 550,000 or more adjacent to a county with a population of 3.3 million or more.

(2) "Emergency operations" means the operation of a water system during an extended power outage at a minimum water pressure of 35 pounds per square inch.

(3) "Extended power outage" means a power outage lasting for more than 24 hours.

(b) An affected utility shall:

(1) ensure the emergency operation of its water system during an extended power outage as soon as safe and practicable following the occurrence of a natural disaster; and

(2) adopt and submit to the commission for its approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations.

(c) The commission shall review an emergency preparedness plan submitted under Subsection (b). If the commission determines that the plan is not acceptable, the commission shall recommend changes to the plan. The commission must make its recommendations on or before the 90th day after the commission receives the plan. In accordance with commission rules, an emergency preparedness plan shall provide for one of the following:

(1) the maintenance of automatically starting auxiliary generators;

(2) the sharing of auxiliary generator capacity with one or more affected utilities;

(3) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(4) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(5) the use of on-site electrical generation or distributed generation facilities;

(6) hardening the electric transmission and distribution system serving the water system;

(7) for existing facilities, the maintenance of direct engine or right angle drives; or

(8) any other alternative determined by the commission to be acceptable.

(d) Each affected utility that supplies, provides, or conveys surface water shall include in its emergency preparedness plan under Subsection (b) provisions for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(e) The commission shall adopt rules to implement this section as an alternative to any rule requiring elevated storage.

(f) The commission shall provide an affected utility with access to the commission's financial, managerial, and technical contractors to assist the utility in complying with the applicable emergency preparedness plan submission deadline.

(g) The commission by rule shall create an emergency preparedness plan template for use by an affected utility when submitting a plan under this section. The emergency preparedness plan template shall contain:

(1) a list and explanation of the preparations an affected utility may make under Subsection (c) for the commission to approve the utility's emergency preparedness plan; and

(2) a list of all commission rules and standards pertaining to emergency preparedness plans.

(h) An emergency generator used as part of an approved emergency preparedness plan under Subsection (c) must be operated and maintained according to the manufacturer's specifications.

(i) The commission shall inspect each utility to ensure that the utility complies with the approved plan.

(j) The commission may grant a waiver of the requirements of this section to an affected utility if the commission determines that compliance with this section will cause a significant financial

burden on customers of the affected utility.

(k) An affected utility may adopt and enforce limitations on water use while the utility is providing emergency operations.

(l) Except as specifically required by this section, information provided by an affected utility under this section is confidential and is not subject to disclosure under Chapter 552, Government Code.

(m) The commission shall coordinate with the utility commission in the administration of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1349 (S.B. 361), Sec. 1, eff. June 19, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 723 (H.B. 805), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.29, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 29, eff. September 1, 2013.

Sec. 13.1396. COORDINATION OF EMERGENCY OPERATIONS. (a) In this section:

(1) "Affected utility" has the meaning assigned by Section 13.1395.

(2) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 539, Sec. 2, eff. June 17, 2011.

(3) "Electric utility" means the electric transmission and distribution utility providing electric service to the water and wastewater facilities of an affected utility.

(4) "Retail electric provider" has the meaning assigned by Section 31.002, Utilities Code.

(b) An affected utility shall submit to the office of emergency management of each county in which the utility has more than one customer, the utility commission, and the office of emergency management of the governor a copy of:

(1) the affected utility's emergency preparedness plan approved under Section 13.1395; and

(2) the commission's notification to the affected utility that the plan is accepted.

(c) Each affected utility shall submit to the utility commission, each electric utility that provides transmission and distribution service to the affected utility, each retail electric provider that sells electric power to the affected utility, the office of emergency management of each county in which the utility has water and wastewater facilities that qualify for critical load status under rules adopted by the utility commission, and the division of emergency management of the governor:

(1) information identifying the location and providing a general description of all water and wastewater facilities that qualify for critical load status; and

(2) emergency contact information for the affected utility, including:

(A) the person who will serve as a point of contact and the person's telephone number;

(B) the person who will serve as an alternative point of contact and the person's telephone number; and

(C) the affected utility's mailing address.

(d) An affected utility shall:

(1) annually submit the information required by Subsection (c) to each electric utility that provides transmission and distribution service to the affected utility and to each retail electric provider that sells electric power to the affected utility; and

(2) immediately update the information provided under Subsection (c) as changes to the information occur.

(e) Each affected utility shall submit annually to each electric utility that provides transmission and distribution service to the affected utility and to each retail electric provider that sells electric power to the affected utility any forms reasonably required by an electric utility or retail electric provider for determining critical load status, including a critical care eligibility determination form or similar form.

(f) Not later than May 1 of each year, each electric utility and each retail electric provider shall determine whether the facilities of the affected utility qualify for critical load status under rules adopted by the utility commission.

(g) If an electric utility determines that an affected utility's facilities do not qualify for critical load status, the electric utility and the retail electric provider, not later than the

30th day after the date the electric utility or retail electric provider receives the information required by Subsections (c) and (d), shall provide a detailed explanation of the electric utility's determination to the affected utility and the office of emergency management of each county in which the affected utility's facilities are located.

Added by Acts 2009, 81st Leg., R.S., Ch. 1349 (S.B. 361), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 539 (H.B. 2619), Sec. 1, eff. June 17, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 539 (H.B. 2619), Sec. 2, eff. June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.30, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 30, eff. September 1, 2013.

Sec. 13.140. EXAMINATION AND TEST OF EQUIPMENT. (a) The regulatory authority may examine and test any meter, instrument, or equipment used for the measurement of service of any utility and may enter any premises occupied by any utility for the purpose of making the examinations and tests and exercising any power provided for in this chapter and may set up and use on those premises any apparatus and appliances necessary for those purposes. The utility may be represented at the making of the examinations, tests, and inspections.

(b) The utility and its officers and employees shall facilitate the examinations, tests, and inspections by giving every reasonable aid to the regulatory authority and any person or persons designated by the regulatory authority for those duties.

(c) Any consumer or user may have a meter or measuring device tested by the utility once without charge after a reasonable period to be fixed by the regulatory authority by rule and at shorter intervals on payment of reasonable fees fixed by the regulatory authority. The regulatory authority shall declare and establish reasonable fees to be paid for other examining and testing of those meters and other measuring devices on the request of the consumer.

(d) If the test is requested to be made within the period of presumed accuracy as fixed by the regulatory authority since the last test of the same meter or other measuring device, the fee to be paid by the consumer or user at the time of his request shall be refunded to the consumer or user if the meter or measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer or user. If the consumer's request is made at a time beyond the period of presumed accuracy fixed by the regulatory authority since the last test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Sec. 13.141. BILLING FOR SERVICE TO STATE. A utility, utility owned by an affected county, or municipally owned utility may not bill or otherwise require the state or a state agency or institution to pay for service before the service is rendered.

Added by Acts 1993, 73rd Leg., ch. 660, Sec. 7, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 979, Sec. 12, eff. June 16, 1995.

Sec. 13.142. TIME OF PAYMENT OF UTILITY BILLS BY STATE. (a) In this section, "utility" includes a municipally owned utility.

(b) The utility commission shall adopt rules concerning payment of utility bills that are consistent with Chapter 2251, Government Code.

(c) This Act does not prohibit a utility from entering into an agreement with the state or a state agency to establish a levelized or average monthly service billing plan. The agreement must require reconciliation of the levelized or equalized bills quarterly.

Added by Acts 1993, 73rd Leg., ch. 660, Sec. 7, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(7), eff. Sept. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.31, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 31, eff. September 1, 2013.

Sec. 13.143. VOLUNTARY CONTRIBUTIONS. (a) A utility may implement as part of its billing process a program under which the utility collects from its customers a voluntary contribution, including a voluntary membership or subscription fee, on behalf of a local library, a volunteer fire department, or an emergency medical service.

(b) A utility that collects contributions under this section shall provide each customer at the time that the customer first becomes a customer, and at least annually thereafter, a written statement:

(1) describing the procedure by which the customer may make a contribution with the customer's bill payment;

(2) designating the local library, volunteer fire department, or emergency medical service to which the utility will deliver the contribution;

(3) informing the customer that a contribution is voluntary; and

(4) describing the deductibility status of the contribution under federal income tax law.

(c) A billing by the utility that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it may be deducted from the billed amount.

(d) The utility shall promptly deliver contributions that it collects under this section to the designated local library, volunteer fire department, or emergency medical service, except that the utility may keep from the contributions an amount equal to the lesser of:

(1) the utility's expenses in administering the contribution program; or

(2) five percent of the amount collected as contributions.

(e) Amounts collected under this section are not rates and are not subject to regulatory assessments, late payment penalties, or other utility-related fees and are not required to be shown in tariffs filed with the regulatory authority.

Added by Acts 1997, 75th Leg., ch. 409, Sec. 1, eff. May 28, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 263 (H.B. 693), Sec. 1, eff. June 14, 2013.

Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the utility commission and the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract. The submission must include the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, a disclosure of any affiliated interest between the parties to the contract, and any other condition or agreement relating to the contract.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.13, eff. Sept. 1, 1997. Renumbered from Sec. 13.143 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(110), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 10.02, eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.32, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 32, eff. September 1, 2013.

Sec. 13.145. MULTIPLE SYSTEMS CONSOLIDATED UNDER TARIFF. (a) A utility may consolidate more than one system under a single tariff only if:

(1) the systems under the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and

(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

(b) This section does not apply to a public utility that

provided utility service in only 24 counties on January 1, 2003.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 10.03, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 871 (S.B. 1063), Sec. 2, eff. September 1, 2005.

Sec. 13.146. WATER CONSERVATION PLAN. The commission shall require a retail public utility that provides potable water service to 3,300 or more connections to:

(1) submit to the executive administrator of the board a water conservation plan based on specific targets and goals developed by the retail public utility and using appropriate best management practices, as defined by Section 11.002, or other water conservation strategies;

(2) designate a person as the water conservation coordinator responsible for implementing the water conservation plan; and

(3) identify, in writing, the water conservation coordinator to the executive administrator of the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 6, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.06, eff. September 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 146 (H.B. 1648), Sec. 1, eff. September 1, 2017.

Sec. 13.1461. CORRECTIONAL FACILITY COMPLIANCE WITH CONSERVATION MEASURES. (a) This section applies only to a correctional facility operated by the Texas Department of Criminal Justice or operated under contract with that department.

(b) Except as provided by Subsection (c), a retail public utility may require the operator of a correctional facility that receives retail water or sewer utility service from the retail public utility to comply with water conservation measures adopted or implemented by the retail public utility.

(c) A correctional facility is not required to comply with a water conservation measure under Subsection (b) if the operator of the correctional facility submits to the retail public utility a written statement from the Texas Department of Criminal Justice that states that the measure would endanger health and safety at the facility or unreasonably increase the costs of operating the facility.

(d) If a retail public utility suspends a water conservation measure and later implements the same measure, the operator of a correctional facility that received an exemption from the original measure under Subsection (c) must submit a new written statement from the Texas Department of Criminal Justice to obtain an exemption under Subsection (c) from the newly implemented measure.

Added by Acts 2017, 85th Leg., R.S., Ch. 248 (H.B. 965), Sec. 1, eff. May 29, 2017.

Sec. 13.147. CONSOLIDATED BILLING AND COLLECTION CONTRACTS. (a) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the utility commission to issue an order requiring the water service provider to provide that service.

(b) A contract or order under this section must provide procedures and deadlines for submitting billing and customer information to the water service provider and for the delivery of collected fees and payments to the sewer service provider.

(c) A contract or order under this section may require or permit a water service provider that provides consolidated billing and collection of fees and payments to:

(1) terminate the water services of a person whose sewage

services account is in arrears for nonpayment; and

(2) charge a customer a reconnection fee if the customer's water service is terminated for nonpayment of the customer's sewage services account.

(d) A water service provider that provides consolidated billing and collection of fees and payments may impose on each sewer service provider customer a reasonable fee to recover costs associated with providing consolidated billing and collection of fees and payments for sewage services.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.06, eff. September 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.33, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 33, eff. September 1, 2013.

Sec. 13.148. WATER SHORTAGE REPORT. (a) A retail public utility and each entity from which the utility is obtaining wholesale water service for the utility's retail system shall notify the commission when the utility or entity is reasonably certain that the water supply will be available for less than 180 days.

(b) The commission shall adopt rules to implement this section and prescribe the form and content of notice required under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 234 (H.B. 252), Sec. 1, eff. September 1, 2013.

Sec. 13.149. NOTIFICATION OF WATER LOSS. (a) The commission by rule shall require a retail public utility that files a water audit required by Section 16.0121 to notify each of the utility's customers of the water loss reported in the water audit.

(b) A retail public utility shall provide the notice required under Subsection (a) on or with:

(1) the utility's next annual consumer confidence report delivered after the water audit is filed; or

(2) the next bill the customer receives after the water

audit is filed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 305 (H.B. 1461), Sec. 1, eff. September 1, 2013.
Redesignated from Water Code, Section 13.148 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(69), eff. September 1, 2019.

Sec. 13.150. REPORTS REQUIRED FOR WATER AND SEWER UTILITIES. (a) This section applies only to a utility that provides retail water or sewer utility service through fewer than 10,000 taps or connections.

(b) Except as provided by Subsection (c), a utility shall deliver to the utility commission a report of the utility's financial, managerial, and technical capacity to provide continuous and adequate service to its customers not later than the third anniversary of the date that the utility violates a final order of the commission by failing to:

(1) provide system capacity that is greater than the required raw water or groundwater production rate or the anticipated daily demand of the system;

(2) provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; or

(3) maintain accurate or properly calibrated testing equipment or other means of monitoring the effectiveness of a chemical treatment or pathogen inactivation or removal process.

(c) A utility that has an existing obligation to deliver a report under Subsection (b) is not required to deliver another report as a result of the occurrence of an event described by Subsection (b) if the event occurs before the date that the utility delivers the report required by Subsection (b).

(d) On receiving notice that a utility has violated an order described by Subsection (b), the commission shall provide written notice of the violation to the utility commission.

(e) The utility commission shall deliver a copy of a report received under Subsection (b) to:

(1) each state senator representing a district that contains a portion of the service area of the utility that submitted the report; and

(2) each state representative representing a district that contains a portion of the service area of the utility that submitted the report.

(f) If a utility fails to deliver a report in accordance with Subsection (b), the utility commission shall report the failure to:

(1) the commission;

(2) each state senator representing a district that contains a portion of the utility's service area; and

(3) each state representative representing a district that contains a portion of the utility's service area.

Added by Acts 2019, 86th Leg., R.S., Ch. 545 (H.B. 3542), Sec. 1, eff. September 1, 2019.

SUBCHAPTER F. PROCEEDINGS BEFORE REGULATORY AUTHORITY

Sec. 13.181. POWER TO ENSURE COMPLIANCE; RATE REGULATION. (a) Except for the provisions of Section 13.192, this subchapter shall apply only to a utility and shall not be applied to municipalities, counties, districts, or water supply or sewer service corporations.

(b) Subject to this chapter, the utility commission has all authority and power of the state to ensure compliance with the obligations of utilities under this chapter. For this purpose the regulatory authority may fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. A rule or order of the regulatory authority may not conflict with the rulings of any federal regulatory body. The utility commission may adopt rules which authorize a utility which is permitted under Section 13.242(c) to provide service without a certificate of public convenience and necessity to request or implement a rate increase and operate according to rules, regulations, and standards of service other than those otherwise required under this chapter provided that rates are just and reasonable for customers and the utility and that service is safe, adequate, efficient, and reasonable.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 16, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 652, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 979, Sec. 13, eff. June 16, 1995; Acts

1997, 75th Leg., ch. 1010, Sec. 6.03, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.34, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 34, eff. September 1, 2013.

Sec. 13.182. JUST AND REASONABLE RATES. (a) The regulatory authority shall ensure that every rate made, demanded, or received by any utility or by any two or more utilities jointly shall be just and reasonable.

(b) Except as provided by Subsection (b-1), rates may not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of consumers.

(b-1) In establishing a utility's rates, the regulatory authority may authorize the utility to establish reduced rates for a minimal level of service to be provided solely to a class of elderly customers 65 years of age or older to ensure that those customers receive that level of service at more affordable rates. The regulatory authority shall allow a utility to establish a fund to receive donations to recover the costs of providing the reduced rates. A utility may not recover those costs through charges to the utility's other customer classes.

(c) For ratemaking purposes, the utility commission may treat two or more municipalities served by a utility as a single class wherever the utility commission considers that treatment to be appropriate.

(d) The utility commission by rule shall establish a preference that rates under a consolidated tariff be consolidated by region. The regions under consolidated tariffs must be determined on a case-by-case basis.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 10.04, eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.35, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 35, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 129 (H.B. 1083), Sec. 1, eff. September 1, 2017.

Sec. 13.183. FIXING OVERALL REVENUES. (a) In fixing the rates for water and sewer services, the regulatory authority shall fix its overall revenues at a level that will:

(1) permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses; and

(2) preserve the financial integrity of the utility.

(b) In a rate proceeding, the regulatory authority may authorize collection of additional revenues from the customers to provide funds for capital improvements necessary to provide facilities capable of providing adequate and continuous utility service if an accurate accounting of the collection and use of those funds is provided to the regulatory authority. A facility constructed with surcharge funds is considered customer contributed capital or contributions in aid of construction and may not be included in invested capital, and depreciation expense is not allowed.

(c) To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the regulatory authority, by rule or ordinance, as appropriate, may adopt specific alternative ratemaking methodologies for water or sewer rates to allow for more timely and efficient cost recovery. Appropriate alternative ratemaking methodologies are the introduction of new customer classes, the cash needs method, and phased and multi-step rate changes. The regulatory authority may also adopt system improvement charges that may be periodically adjusted to ensure timely recovery of infrastructure investment. The utility commission by rule shall establish a schedule that requires all utilities that have implemented a system improvement charge approved by the utility commission to make periodic filings with the utility commission to modify or review base rates charged by the utility. Overall revenues determined according

to an alternative ratemaking methodology adopted under this section must provide revenues to the utility that satisfy the requirements of Subsection (a). The regulatory authority may not approve rates under an alternative ratemaking methodology unless the regulatory authority adopts the methodology before the date the rate application was administratively complete.

(d) A regulatory authority other than the utility commission may not approve an acquisition adjustment for a system purchased before the effective date of an ordinance authorizing acquisition adjustments.

(e) In determining to use an alternative ratemaking methodology, the regulatory authority shall assure that rates, operations, and services are just and reasonable to the consumers and to the utilities.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 9, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 17, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1010, Sec. 6.04, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 10.05, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.36, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 36, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 4, eff. September 1, 2019.

Sec. 13.184. FAIR RETURN; BURDEN OF PROOF. (a) Unless the utility commission establishes alternate rate methodologies in accordance with Section 13.183(c), the utility commission may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public. The governing body of a municipality exercising its original jurisdiction over rates and services may use alternate ratemaking methodologies established by ordinance or by utility commission rule in accordance with Section 13.183(c). Unless the municipal regulatory authority uses alternate ratemaking methodologies established by ordinance or by utility commission rule in accordance

with Section 13.183(c), it may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public.

(b) In fixing a reasonable return on invested capital, the regulatory authority shall consider, in addition to other applicable factors, the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management.

(c) In any proceeding involving any proposed change of rates, the burden of proof shall be on the utility to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.05, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.37, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 37, eff. September 1, 2013.

Sec. 13.185. COMPONENTS OF INVESTED CAPITAL AND NET INCOME. (a) Unless alternate methodologies are adopted as provided in Sections 13.183(c) and 13.184(a), the components of invested capital and net income shall be determined according to the rules stated in this section.

(b) Utility rates shall be based on the original cost of property used by and useful to the utility in providing service, including, if necessary to the financial integrity of the utility, construction work in progress at cost as recorded on the books of the utility. The inclusion of construction work in progress is an exceptional form of rate relief to be granted only on the demonstration by the utility by clear and convincing evidence that the inclusion is in the ratepayers' best interest and is necessary to the financial integrity of the utility. Construction work in progress may not be included in the rate base for major projects under construction to the extent that those projects have been

inefficiently or imprudently planned or managed. Original cost is the actual money cost or the actual money value of any consideration paid, other than money, of the property at the time it shall have been dedicated to public use, whether by the utility that is the present owner or by a predecessor, less depreciation. Utility property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in invested capital.

(c) Cost of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

(d) Net income is the total revenues of the utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall:

(1) base a utility's expenses on historic test year information adjusted for known and measurable changes, as determined by utility commission rules; and

(2) determine expenses and revenues in a manner consistent with Subsections (e) through (h) of this section.

(e) Payment to affiliated interests for costs of any services, or any property, right or thing, or for interest expense may not be allowed either as capital cost or as expense except to the extent that the regulatory authority finds that payment to be reasonable and necessary. A finding of reasonableness and necessity must include specific statements setting forth the cost to the affiliate of each item or class of items in question and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or to unaffiliated persons or corporations.

(f) If the utility is a member of an affiliated group that is eligible to file a consolidated income tax return and if it is advantageous to the utility to do so, income taxes shall be computed as though a consolidated return had been filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns. The amounts of income taxes saved by a consolidated group of which a utility is a member due to the elimination in the consolidated return of the intercompany profit on purchases by the utility from an affiliate shall be applied to reduce

the cost of those purchases. The investment tax credit allowed against federal income taxes to the extent retained by the utility shall be applied as a reduction in the rate-based contribution of the assets to which the credit applies to the extent and at the rate as allowed by the Internal Revenue Code.

(g) The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for ratemaking purposes.

(h) The regulatory authority may not include for ratemaking purposes:

(1) legislative advocacy expenses, whether made directly or indirectly, including legislative advocacy expenses included in trade association dues;

(2) costs of processing a refund or credit under this subchapter; or

(3) any expenditure found by the regulatory authority to be unreasonable, unnecessary, or not in the public interest, including executive salaries, advertising expenses, legal expenses, and civil penalties or fines.

(i) Water and sewer utility property in service that was acquired from an affiliate or developer before September 1, 1976, and that is included by the utility in its rate base shall be included in all ratemaking formulas at the installed cost of the property rather than the price set between the entities. Unless the funds for this property are provided by explicit customer agreements, the property is considered invested capital and not contributions in aid of construction or customer-contributed capital.

(j) Depreciation expense included in the cost of service includes depreciation on all currently used, depreciable utility property owned by the utility except for property provided by explicit customer agreements or funded by customer contributions in aid of construction. Depreciation on all currently used and useful developer or governmental entity contributed property shall be allowed in the cost of service.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 10, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 18, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1010, Sec. 6.06, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.38, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 38, eff. September 1, 2013.

Sec. 13.186. UNREASONABLE OR VIOLATIVE EXISTING RATES; INVESTIGATING COSTS OF OBTAINING SERVICE FROM ANOTHER SOURCE. (a) If the regulatory authority, after reasonable notice and hearing, on its own motion or on complaint by any affected person, finds that the existing rates of any utility for any service are unreasonable or in any way in violation of any law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be observed and in force, and shall fix the same by order to be served on the utility. Those rates constitute the legal rates of the utility until changed as provided in this chapter.

(b) If a utility does not itself produce that which it distributes, transmits, or furnishes to the public for compensation, but obtains it from another source, the regulatory authority may investigate the cost of that production in any investigation of the reasonableness of the rates of the utility.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 19, eff. Sept. 1, 1989.

Sec. 13.1861. RATES CHARGED STATE. The rates that a utility or municipally owned utility charges the state or a state agency or institution may not include an amount representing a gross receipts assessment, regulatory assessment, or other similar expense. A regulatory authority may adopt reasonable rules specifying similar expenses to be excluded.

Added by Acts 1993, 73rd Leg., ch. 660, Sec. 8, eff. Sept. 1, 1993.

Sec. 13.187. CLASS A UTILITIES: STATEMENT OF INTENT TO CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) This section applies only to a Class A utility.

(a-1) A utility may not make changes in its rates except by

sending by mail or e-mail a statement of intent to each ratepayer and to the regulatory authority having original jurisdiction at least 35 days before the effective date of the proposed change. The utility may send the statement of intent to a ratepayer by e-mail only if the ratepayer has agreed to receive communications electronically. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include:

(1) the information required by the regulatory authority's rules;

(2) a billing comparison regarding the existing water rate and the new water rate computed for the use of:

(A) 5,000 gallons of water; and

(B) 10,000 gallons of water;

(3) a billing comparison regarding the existing sewer rate and the new sewer rate computed for the use of 5,000 gallons, unless the utility proposes a flat rate for sewer services; and

(4) a description of the process by which a ratepayer may intervene in the ratemaking proceeding.

(b) The utility shall mail, send by e-mail, or deliver a copy of the statement of intent to the Office of Public Utility Counsel, appropriate offices of each affected municipality, and any other affected persons as required by the regulatory authority's rules.

(c) When the statement of intent is delivered, the utility shall file with the regulatory authority an application to change rates. The application must include information the regulatory authority requires by rule and any appropriate cost and rate schedules and written testimony supporting the requested rate increase. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the regulatory authority may disallow the nonsupported costs or expenses.

(d) Except as provided by Subsections (d-1) and (e), if the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The utility

commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the utility commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n).

(d-1) After written notice to the utility, a local regulatory authority may suspend the effective date of a rate change for not more than 90 days from the proposed effective date. If the local regulatory authority does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the local regulatory authority thereafter to continue a hearing in progress.

(e) After written notice to the utility, the utility commission may suspend the effective date of a rate change for not more than 150 days from the proposed effective date. If the utility commission does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the utility commission thereafter to continue a hearing in progress.

(e-1) The 150-day period described by Subsection (e) shall be extended two days for each day a hearing exceeds 15 days.

(f) The regulatory authority shall, not later than the 30th day after the effective date of the change, begin a hearing to determine the propriety of the change. If the regulatory authority is the utility commission, the utility commission may refer the matter to the State Office of Administrative Hearings as provided by utility commission rules.

(g) A local regulatory authority hearing described by this section may be informal.

(g-1) If the regulatory authority is the utility commission, the utility commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The utility commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The utility is not required to provide a formal answer or file any other formal pleading in response to the

notice, and the absence of an answer does not affect an order for a hearing.

(h) If, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law, the regulatory authority shall determine the rates to be charged by the utility and shall fix the rates by order served on the utility.

(i) A utility may put a changed rate into effect throughout the area in which the utility sought to change its rates, including an area over which the utility commission is exercising appellate or original jurisdiction, by filing a bond with the utility commission if the suspension period has been extended under Subsection (e-1) and the utility commission fails to make a final determination before the 151st day after the date the rate change would otherwise be effective.

(j) The bonded rate may not exceed the proposed rate. The bond must be payable to the utility commission in an amount, in a form, and with a surety approved by the utility commission and conditioned on refund.

(k) Unless otherwise agreed to by the parties to the rate proceeding, the utility shall refund or credit against future bills:

(1) all sums collected under the bonded rates in excess of the rate finally ordered; and

(2) interest on those sums at the current interest rate as determined by the regulatory authority.

(l) At any time during the pendency of the rate proceeding the regulatory authority may fix interim rates to remain in effect during the applicable suspension period under Subsection (d-1) or Subsections (e) and (e-1) or until a final determination is made on the proposed rate. If the regulatory authority does not establish interim rates, the rates in effect when the application described by Subsection (c) was filed continue in effect during the suspension period.

(m) If the regulatory authority sets a final rate that is higher than the interim rate, the utility shall be allowed to collect the difference between the interim rate and final rate unless otherwise agreed to by the parties to the rate proceeding.

(n) For good cause shown, the regulatory authority may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended or an

interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.

(o) If a regulatory authority other than the utility commission establishes interim rates or bonded rates, the regulatory authority must make a final determination on the rates not later than the first anniversary of the effective date of the interim rates or bonded rates or the rates are automatically approved as requested by the utility.

(p) Except to implement a rate adjustment provision approved by the regulatory authority by rule or ordinance, as applicable, or to adjust the rates of a newly acquired utility system, a utility or two or more utilities under common control and ownership may not file a statement of intent to increase its rates more than once in a 12-month period, unless the regulatory authority determines that a financial hardship exists. If the regulatory authority requires the utility to deliver a corrected statement of intent, the utility is not considered to be in violation of the 12-month filing requirement.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 11, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 20, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 5, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 4.03, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 402, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 400, Sec. 4, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 3.10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 966, Sec. 10.06, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1106 (H.B. 2301), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 9.02, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 180, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.39, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 39, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 5, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 5, eff. September 1, 2019.

Sec. 13.1871. CLASS B UTILITIES: STATEMENT OF INTENT TO CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) Except as provided by Sections 13.18715 and 13.1872, this section applies only to a Class B utility.

(b) A utility may not make changes in its rates except by sending by mail or e-mail a statement of intent to each ratepayer and to the regulatory authority having original jurisdiction at least 35 days before the effective date of the proposed change. The utility may send the statement of intent to a ratepayer by e-mail only if the ratepayer has agreed to receive communications electronically. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include:

(1) the information required by the regulatory authority's rules;

(2) a billing comparison regarding the existing water rate and the new water rate computed for the use of:

(A) 5,000 gallons of water; and

(B) 10,000 gallons of water;

(3) a billing comparison regarding the existing sewer rate and the new sewer rate computed for the use of 5,000 gallons, unless the utility proposes a flat rate for sewer services; and

(4) a description of the process by which a ratepayer may file a complaint under Subsection (i).

(c) The utility shall mail, send by e-mail, or deliver a copy of the statement of intent to the appropriate offices of each affected municipality and to any other affected persons as required by the regulatory authority's rules.

(d) When the statement of intent is delivered, the utility shall file with the regulatory authority an application to change rates. The application must include information the regulatory authority requires by rule and any appropriate cost and rate schedules supporting the requested rate increase. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the

costs and expenses that are shown in the application, the regulatory authority may disallow the nonsupported costs or expenses.

(e) Except as provided by Subsection (f) or (g), if the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The utility commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the utility commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n).

(f) After written notice to the utility, a local regulatory authority may suspend the effective date of a rate change for not more than 90 days from the proposed effective date. If the local regulatory authority does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the local regulatory authority thereafter to continue a hearing in progress.

(g) After written notice to the utility, the utility commission may suspend the effective date of a rate change for not more than 265 days from the proposed effective date. If the utility commission does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the utility commission thereafter to continue a hearing in progress.

(h) The 265-day period described by Subsection (g) shall be extended by two days for each day a hearing exceeds 15 days.

(i) If, before the 91st day after the effective date of the rate change, the regulatory authority receives a complaint from any affected municipality, or from the lesser of 1,000 or 10 percent of the ratepayers of the utility over whose rates the regulatory authority has original jurisdiction, the regulatory authority shall set the matter for hearing.

(j) If the regulatory authority receives at least the number of complaints from ratepayers required for the regulatory authority to set a hearing under Subsection (i), the regulatory authority may,

pending the hearing and a decision, suspend the date the rate change would otherwise be effective. Except as provided by Subsection (h), the proposed rate may not be suspended for longer than:

(1) 90 days by a local regulatory authority; or

(2) 265 days by the utility commission.

(k) The regulatory authority may set the matter for hearing on its own motion at any time within 120 days after the effective date of the rate change.

(l) The hearing may be informal.

(m) The regulatory authority shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The utility commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice for the hearing, including notice to the governing body of each affected municipality and county. The utility is not required to provide a formal answer or file any other formal pleading in response to the notice, and the absence of an answer does not affect an order for a hearing.

(n) The utility shall mail notice of the hearing to each ratepayer before the hearing. The notice must include a description of the process by which a ratepayer may intervene in the ratemaking proceeding.

(o) If, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law, the regulatory authority shall determine the rates to be charged by the utility and shall fix the rates by order served on the utility.

(p) A utility may put a changed rate into effect throughout the area in which the utility sought to change its rates, including an area over which the utility commission is exercising appellate or original jurisdiction, by filing a bond with the utility commission if the suspension period has been extended under Subsection (h) and the utility commission fails to make a final determination before the 266th day after the date the rate change would otherwise be effective.

(q) The bonded rate may not exceed the proposed rate. The bond must be payable to the utility commission in an amount, in a form, and with a surety approved by the utility commission and conditioned on refund.

(r) Unless otherwise agreed to by the parties to the rate proceeding, the utility shall refund or credit against future bills:

(1) all sums collected under the bonded rates in excess of the rate finally ordered; and

(2) interest on those sums at the current interest rate as determined by the regulatory authority.

(s) At any time during the pendency of the rate proceeding the regulatory authority may fix interim rates to remain in effect during the applicable suspension period under Subsection (f) or Subsections (g) and (h) or until a final determination is made on the proposed rate. If the regulatory authority does not establish interim rates, the rates in effect when the application described by Subsection (d) was filed continue in effect during the suspension period.

(t) If the regulatory authority sets a final rate that is higher than the interim rate, the utility shall be allowed to collect the difference between the interim rate and final rate unless otherwise agreed to by the parties to the rate proceeding.

(u) For good cause shown, the regulatory authority may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.

(v) If a regulatory authority other than the utility commission establishes interim rates or bonded rates, the regulatory authority must make a final determination on the rates not later than the first anniversary of the effective date of the interim rates or bonded rates or the rates are automatically approved as requested by the utility.

(w) Except to implement a rate adjustment provision approved by the regulatory authority by rule or ordinance, as applicable, or to adjust the rates of a newly acquired utility system, a utility or two or more utilities under common control and ownership may not file a statement of intent to increase its rates more than once in a 12-month period, unless the regulatory authority determines that a financial hardship exists. If the regulatory authority requires the utility to deliver a corrected statement of intent, the utility is not considered to be in violation of the 12-month filing requirement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.40, eff. September 1, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 40, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 6, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 18.001, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 6, eff. September 1, 2019.

Sec. 13.18715. CLASS C UTILITIES: STATEMENT OF INTENT TO CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) This section applies only to a Class C utility.
(b) A utility may not make changes in its rates except by complying with the procedures to change rates described by Section 13.1871.
(c) Notwithstanding Section 13.1871(n), the utility may send the notice required by that subsection by mail or e-mail or may deliver a copy of the notice to the ratepayers.

Added by Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 7, eff. September 1, 2019.

Sec. 13.1872. CLASS D UTILITIES: RATE ADJUSTMENT. (a) This section applies only to a Class D utility.
(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 14, eff. September 1, 2019.
(c) A utility may not make changes in its rates except by:
(1) filing an application for a rate adjustment under the procedures described by Subsection (e) and sending by mail, or by e-mail if the ratepayer has agreed to receive communications electronically, a notice to each ratepayer describing the proposed rate adjustment at least 30 days before the effective date of the proposed change; or
(2) complying with the procedures to change rates described by Section 13.1871.
(c-1) A utility that chooses to comply with Section 13.1871 as authorized under Subsection (c)(2) of this section may send the

notice required by Section 13.1871(n) by mail or e-mail or may deliver a copy of the notice to the ratepayers.

(d) The utility shall mail, send by e-mail, or deliver a copy of the application to the appropriate offices of each affected municipality and to any other affected persons as required by the regulatory authority's rules.

(e) The utility commission by rule shall adopt procedures to allow a utility to receive without a hearing an annual rate adjustment. The rules must:

(1) include standard language to be included in the notice described by Subsection (c)(1) describing the rate adjustment process; and

(2) provide that an annual rate adjustment described by this section may not result in a rate increase to any class or category of ratepayer of more than five percent.

(f) A utility may adjust the utility's rates using the procedures adopted under Subsection (e) not more than once each year and not more than four times between rate proceedings described by Section 13.1871.

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.40, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 40, eff. September 1, 2013.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 8, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 9, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 14, eff. September 1, 2019.

Sec. 13.1873. APPLICATION RULES. In adopting rules relating to the information required in an application for a Class B, Class C, or Class D utility to change rates, the utility commission shall ensure that a:

(1) Class B utility can file a less burdensome and complex application than is required of a Class A utility; and

(2) Class C or Class D utility can file a less burdensome

and complex application than is required of a Class A or Class B utility.

Added by Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 10, eff. September 1, 2019.

Sec. 13.188. ADJUSTMENT FOR CHANGE IN ENERGY COSTS. (a) Notwithstanding any other provision in this chapter, the utility commission by rule shall adopt a procedure allowing a utility to file with the utility commission an application to timely adjust the utility's rates to reflect an increase or decrease in documented energy costs in a pass through clause. The utility commission, by rule, shall require the pass through of documented decreases in energy costs within a reasonable time. The pass through, whether a decrease or increase, shall be implemented on no later than an annual basis, unless the utility commission determines a special circumstance applies.

(b) Notwithstanding any other provision to the contrary, this adjustment is an uncontested matter not subject to a contested case hearing. However, the utility commission shall hold an uncontested public meeting:

(1) on the request of a member of the legislature who represents the area served by the water and sewer utility; or

(2) if the utility commission determines that there is substantial public interest in the matter.

(c) A proceeding under this section is not a rate case and Sections 13.187, 13.1871, and 13.1872 do not apply.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.07, eff. September 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.41, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 41, eff. September 1, 2013.

Sec. 13.189. UNREASONABLE PREFERENCE OR PREJUDICE AS TO RATES OR SERVICES. (a) A water and sewer utility as to rates or services may not make or grant any unreasonable preference or advantage to any

corporation or person within any classification or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage.

(b) A utility may not establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

(c) For purposes of this section, a reduced rate authorized under Section 13.182(b-1) does not:

(1) make or grant an unreasonable preference or advantage to any corporation or person;

(2) subject a corporation or person to an unreasonable prejudice or disadvantage; or

(3) constitute an unreasonable difference as to rates of service between classes of service.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 129 (H.B. 1083), Sec. 2, eff. September 1, 2017.

Sec. 13.190. EQUALITY OF RATES AND SERVICES. (a) A water and sewer utility may not directly or indirectly by any device or in any manner charge, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the utility applicable to that service when filed in the manner provided in this chapter, and a person may not knowingly receive or accept any service from a utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a utility on the effective date of this chapter may be continued until schedules are filed.

(b) This chapter does not prevent a cooperative corporation from returning to its members the whole or any part of the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Sec. 13.191. DISCRIMINATION; RESTRICTION ON COMPETITION. A water and sewer utility may not discriminate against any person or corporation that sells or leases equipment or performs services in competition with the utility, and a utility may not engage in any other practice that tends to restrict or impair that competition.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Sec. 13.192. PAYMENTS IN LIEU OF TAXES. Payments made in lieu of taxes by a water and sewer utility to the municipality by which it is owned may not be considered an expense of operation for the purpose of determining, fixing, or regulating the rates to be charged for the provision of utility service to a school district or hospital district. No rates received by a utility from a school district or hospital district may be used to make or to cover the cost of making payments in lieu of taxes to the municipality by which the utility is owned.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

Sec. 13.241. GRANTING CERTIFICATES. (a) In determining whether to grant or amend a certificate of public convenience and necessity, the utility commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(b) For water utility service, the commission shall ensure that the applicant:

(1) is capable of providing drinking water that meets the requirements of Chapter 341, Health and Safety Code, and requirements of this code; and

(2) has access to an adequate supply of water.

(c) For sewer utility service, the commission shall ensure that the applicant is capable of meeting the commission's design criteria for sewer treatment plants and the requirements of this code.

(d) Before the utility commission grants a new certificate of convenience and necessity for an area which would require

construction of a physically separate water or sewer system, the applicant must demonstrate to the utility commission that regionalization or consolidation with another retail public utility is not economically feasible.

(e) The utility commission by rule shall develop a standardized method for determining under Section 13.246(f) which of two or more retail public utilities or water supply or sewer service corporations that apply for a certificate of public convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area is more capable financially, managerially, and technically of providing continuous and adequate service. In this subsection, "economically distressed area" has the meaning assigned by Section 15.001.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.07, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 404, Sec. 30, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 2, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.42, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 42, eff. September 1, 2013.

Sec. 13.242. CERTIFICATE REQUIRED. (a) Unless otherwise specified, a utility, a utility operated by an affected county, or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the utility commission a certificate that the present or future public convenience and necessity will require that installation, operation, or extension, and except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

(b) A person that is not a retail public utility or a utility or water supply corporation that is operating under provisions pursuant to Subsection (c) may not construct facilities to provide water or sewer service to more than one service connection not on the property owned by the person and that are within the certificated area of a retail public utility without first obtaining written consent from the retail public utility. A person that violates this section or the reasonable and legal terms and conditions of any written consent is subject to the administrative penalties described by Section 13.4151 of this code.

(c) The utility commission may by rule allow a municipality or utility or water supply corporation to render retail water service without a certificate of public convenience and necessity if the municipality has given notice under Section 13.255 that it intends to provide retail water service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certificated area of another retail public utility.

(d) A supplier of wholesale water or sewer service may not require a purchaser to obtain a certificate of public convenience and necessity if the purchaser is not otherwise required by this chapter to obtain the certificate.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 13, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 21, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 652, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 979, Sec. 14, eff. June 16, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 3, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.43, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 43, eff. September 1, 2013.

Sec. 13.243. EXCEPTIONS FOR EXTENSION OF SERVICE. A retail public utility is not required to secure a certificate of public convenience and necessity for:

(1) an extension into territory contiguous to that already

served by it, if the point of ultimate use is within one-quarter mile of the boundary of the certificated area, and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility; or

(2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 14, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 22, eff. Sept. 1, 1989.

Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION; EVIDENCE AND CONSENT. (a) Except as provided by Section 13.258, to obtain a certificate of public convenience and necessity or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the utility commission an application for a certificate or for an amendment as provided by this section.

(b) Each public utility and water supply or sewer service corporation shall file with the utility commission a map or maps showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and each certificated retail public utility shall file with the utility commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas.

(c) Each applicant for a certificate or for an amendment shall file with the utility commission evidence required by the utility commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

(d) An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain:

(1) a description of the proposed service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) if a recorded plat of the area exists, lot and block number;

(2) a description of any requests for service in the proposed service area;

(3) a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area;

(4) a description of the sources of funding for all facilities;

(5) to the extent known, a description of current and projected land uses, including densities;

(6) a current financial statement of the applicant;

(7) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is:

(A) at least 50 acres; and

(B) wholly or partially located within the proposed service area; and

(8) any other item required by the utility commission.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 23, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.286, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 4, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.44, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 44, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 948 (S.B. 1842), Sec. 2, eff. September 1, 2017.

Sec. 13.245. MUNICIPAL BOUNDARIES OR EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality with a population of 500,000 or more.

(b) Except as provided by Subsections (c), (c-1), and (c-2), the utility commission may not grant to a retail public utility a

certificate of public convenience and necessity for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(c) If a municipality has not consented under Subsection (b) before the 180th day after the date the municipality receives the retail public utility's application, the utility commission shall grant the certificate of public convenience and necessity without the consent of the municipality if the utility commission finds that the municipality:

(1) does not have the ability to provide service; or

(2) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(c-1) If a municipality has not consented under Subsection (b) before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the utility commission, including a capital improvements plan required by Section 13.244(d)(3) or a subdivision plat, the utility commission may grant the certificate of public convenience and necessity without the consent of the municipality if:

(1) the utility commission makes the findings required by Subsection (c);

(2) the municipality has not entered into a binding commitment to serve the area that is the subject of the retail public utility's application to the utility commission before the 180th day after the date the formal request was made; and

(3) the landowner or retail public utility that submitted the formal request has not unreasonably refused to:

(A) comply with the municipality's service extension and development process; or

(B) enter into a contract for water or sewer services with the municipality.

(c-2) If a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the

municipality's governing body or an official notification from the municipality, the utility commission is not required to make the findings otherwise required by this section and may grant the certificate of public convenience and necessity to the retail public utility at any time after the date of the formal vote or receipt of the official notification.

(c-3) The utility commission must include as a condition of a certificate of public convenience and necessity granted under Subsection (c-1) or (c-2) that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

(c-4) Subsections (c-1), (c-2), and (c-3) do not apply to:

(1) a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county;

(2) a county with a population of more than 30,000 and less than 35,000 that borders the Red River; or

(3) a county with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (2).

(c-5) Subsections (c-1), (c-2), and (c-3) do not apply to:

(1) a county with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

(2) a county with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

(d) A commitment described by Subsection (c)(2) must provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.

(e) If the utility commission makes a decision under Subsection (d) regarding the grant of a certificate of public convenience and necessity without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court. The court shall hear the petition within 120 days after the date the petition is filed. On final disposition, the court may award reasonable fees to the prevailing party.

Added by Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 5, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1325 (S.B. 573), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.45, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 45, eff. September 1, 2013.

Sec. 13.2451. EXTENSION BEYOND EXTRATERRITORIAL JURISDICTION. (a) Except as provided by Subsection (b), if a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(b) The utility commission may not extend a municipality's certificate of public convenience and necessity beyond its extraterritorial jurisdiction if an owner of land that is located wholly or partly outside the extraterritorial jurisdiction elects to exclude some or all of the landowner's property within a proposed service area in accordance with Section 13.246(h). This subsection does not apply to a transfer of a certificate as approved by the utility commission.

(b-1) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county.

(b-2) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county:

(1) with a population of more than 30,000 and less than 35,000 that borders the Red River; or

(2) with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (1).

(b-3) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county:

(1) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

(2) with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

(c) The utility commission, after notice to the municipality and an opportunity for a hearing, may decertify an area outside a municipality's extraterritorial jurisdiction if the municipality does not provide service to the area on or before the fifth anniversary of the date the certificate of public convenience and necessity was granted for the area. This subsection does not apply to a certificate of public convenience and necessity for an area:

(1) that was transferred to a municipality on approval of the utility commission; and

(2) in relation to which the municipality has spent public funds.

(d) To the extent of a conflict between this section and Section 13.245, Section 13.245 prevails.

Added by Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 5, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.08, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1325 (S.B. 573), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.46, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 46, eff. September 1, 2013.

Sec. 13.246. NOTICE AND HEARING; ISSUANCE OR REFUSAL; FACTORS CONSIDERED. (a) If an application for a certificate of public convenience and necessity or for an amendment to a certificate is filed, the utility commission shall cause notice of the application to be given to affected parties and to each county and groundwater conservation district that is wholly or partly included in the area proposed to be certified. If requested, the utility commission shall fix a time and place for a hearing and give notice of the hearing. Any person affected by the application may intervene at the hearing.

(a-1) Except as otherwise provided by this subsection, in addition to the notice required by Subsection (a), the utility commission shall require notice to be mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included

in the area proposed to be certified. Notice required under this subsection must be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time the utility commission received the application for the certificate or amendment. Good faith efforts to comply with the requirements of this subsection shall be considered adequate notice to landowners. Notice under this subsection is not required for a matter filed with the utility commission or the commission under:

(1) Section 13.248 or 13.255; or

(2) Chapter 65.

(b) The utility commission may grant applications and issue certificates and amendments to certificates only if the utility commission finds that a certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The utility commission may issue a certificate or amendment as requested, or refuse to issue it, or issue it for the construction of only a portion of the contemplated system or facility or extension, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(c) Certificates of public convenience and necessity and amendments to certificates shall be granted by the utility commission on a nondiscriminatory basis after consideration by the utility commission of:

(1) the adequacy of service currently provided to the requested area;

(2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;

(3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.

(d) The utility commission may require an applicant for a certificate or for an amendment to provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure that continuous and adequate utility service is provided.

(e) Where applicable, in addition to the other factors in this section the utility commission shall consider the efforts of the applicant:

(1) to extend service to any economically distressed areas located within the service areas certificated to the applicant; and

(2) to enforce the rules adopted under Section 16.343.

(f) If two or more retail public utilities or water supply or sewer service corporations apply for a certificate of public convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area and otherwise meet the requirements for obtaining a new certificate, the utility commission shall grant the certificate to the retail public utility or water supply or sewer service corporation that is more capable financially, managerially, and technically of providing continuous and adequate service.

(g) In this section, "economically distressed area" has the meaning assigned by Section 15.001.

(h) Except as provided by Subsection (i), a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the utility commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a

further hearing or other process by the utility commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area. An applicant for a certificate of public convenience and necessity that has land removed from its proposed certificated service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any reason, including the violation of law or utility commission or commission rules by the water or sewer system of another person.

(i) A landowner is not entitled to make an election under Subsection (h) but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the utility commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

(j) This section does not apply to an application under Section 13.258.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 15, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 24, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 6, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 6.08, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 404, Sec. 31, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 6, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.09, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 363 (H.B. 1295), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1325 (S.B. 573), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.47, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 47, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 948 (S.B. 1842), Sec. 3, eff. September 1, 2017.

Sec. 13.247. AREA WITHIN MUNICIPALITY. (a) If an area is within the boundaries of a municipality, all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area may continue and extend service in its area of public convenience and necessity within the area pursuant to the rights granted by its certificate and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under Subsection (d). Except as provided by Section 13.2475 or 13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the utility commission a certificate of public convenience and necessity that includes the areas to be served.

(b) Notwithstanding any other provision of law, a retail public utility may continue and extend service within its area of public convenience and necessity and utilize the roads, streets, highways, alleys, and public property to furnish retail utility service, subject to the authority of the governing body of a municipality to require any retail public utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets, by giving to the retail public utility 30 days' notice and specifying the new location for the facilities along the right-of-way of the street or streets.

(c) This section may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation, or as prohibiting any municipality from levying taxes and other special charges for the use of the streets as are authorized by Section 182.025, Tax Code.

(d) In addition to any other rights provided by law, a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries. The municipality shall pay just and adequate compensation for the property. In this subsection,

"substandard water or sewer system" means a system that is not in compliance with the municipality's standards for water and wastewater service.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 25, eff. Sept. 1, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 7, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 8, eff. September 1, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.48, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 48, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 673 (S.B. 789), Sec. 1, eff. September 1, 2015.

Sec. 13.2475. CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE SEWER SERVICE IN CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality:

(1) with a population of more than 95,000;

(2) located in a county that:

(A) borders Lake Palestine; and

(B) has a population of more than 200,000;

(3) that owns and operates a utility that provides sewer service; and

(4) that has an area within the boundaries of the municipality that is certificated to another retail public utility that provides sewer service.

(b) A municipality may provide sewer service to an area entirely within the municipality's boundaries without first having to obtain from the utility commission a certificate of public convenience and necessity that includes the area to be served, regardless of whether the area to be served is certificated to another retail public utility.

(c) Not less than 30 days before the municipality begins providing sewer service to an area certificated to another retail

public utility, the municipality shall provide notice to the retail public utility and the utility commission of its intention to provide service to the area.

(d) On receipt of the notice required by Subsection (c), a retail public utility may:

(1) petition the utility commission to decertify its certificate for the area to be served by the municipality; or

(2) discontinue service to the area to be served by the municipality, provided that there is no interruption of service to any customer.

(e) This section may not be construed to limit the right of a retail public utility to provide service in an area certificated to the retail public utility.

(f) This section does not expand a municipality's power of eminent domain under Chapter 21, Property Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 673 (S.B. 789), Sec. 2, eff. September 1, 2015.

Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the utility commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 26, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.49, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 49, eff. September 1, 2013.

Sec. 13.250. CONTINUOUS AND ADEQUATE SERVICE; DISCONTINUANCE, REDUCTION, OR IMPAIRMENT OF SERVICE. (a) Except as provided by this section or Section 13.2501 of this code, any retail public utility that possesses or is required to possess a certificate of public

convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.

(b) Unless the utility commission issues a certificate that neither the present nor future convenience and necessity will be adversely affected, the holder of a certificate or a person who possesses facilities used to provide utility service shall not discontinue, reduce, or impair service to a certified service area or part of a certified service area except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a utility commission-ordered arrangement between the two service providers;

(3) nonuse; or

(4) other similar reasons in the usual course of business.

(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the utility commission, shall be in conformity with and subject to conditions, restrictions, and limitations that the utility commission prescribes.

(d) Except as provided by this subsection, a retail public utility that has not been granted a certificate of public convenience and necessity may not discontinue, reduce, or impair retail water or sewer service to any ratepayer without approval of the regulatory authority. Except as provided by this subsection, a utility or water supply corporation that is allowed to operate without a certificate of public convenience and necessity under Section 13.242(c) may not discontinue, reduce, or impair retail water or sewer service to any ratepayer without the approval of the regulatory authority. Subject to rules of the regulatory authority, a retail public utility, utility, or water supply corporation described in this subsection may discontinue, reduce, or impair retail water or sewer service for:

(1) nonpayment of charges;

(2) nonuse; or

(3) other similar reasons in the usual course of business.

(e) Not later than the 48th hour after the hour in which a utility files a bankruptcy petition, the utility shall report this

fact to the utility commission and the commission in writing.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 16, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 1102, Sec. 5, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 27, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 7, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 652, Sec. 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 400, Sec. 5, eff. Sept. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.50, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 50, eff. September 1, 2013.

Sec. 13.2501. CONDITIONS REQUIRING REFUSAL OF SERVICE. The holder of a certificate of public convenience and necessity shall refuse to serve a customer within its certified area if the holder of the certificate is prohibited from providing the service under Section 212.012 or 232.0047, Local Government Code.

Added by Acts 1987, 70th Leg., ch. 1102, Sec. 6, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(f), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, Sec. 3.13, eff. Sept. 1, 1989.

Sec. 13.2502. SERVICE EXTENSIONS BY WATER SUPPLY AND SEWER SERVICE CORPORATION OR SPECIAL UTILITY DISTRICT. (a) Notwithstanding Section 13.250, a water supply or sewer service corporation or a special utility district organized under Chapter 65 is not required to extend retail water or sewer utility service within the certificated area of the corporation or special utility district to a service applicant in a subdivision if the corporation or special utility district documents that:

(1) the developer of the subdivision has failed to comply with the subdivision service extension policy of the corporation or special utility district as set forth in the tariff of the corporation or the policies of the special utility district; and

(2) the service applicant purchased the property after the corporation or special utility district gave notice as provided by

this section of the rules of the corporation or special utility district applicable to service to subdivisions from the corporation or special utility district.

(b) Publication of notice in a newspaper of general circulation in each county in which the corporation or special utility district is certificated for utility service of the requirement to comply with the subdivision service extension policy constitutes notice under this section. The notice must be published once a week for two consecutive weeks on a biennial basis and must contain information describing the subdivision service extension policy of the corporation or special utility district. The corporation or special utility district must be able to provide proof of publication through an affidavit of the publisher of the newspaper that specifies each county in which the newspaper is generally circulated.

(c) As an alternative to publication of notice as provided by Subsection (b), a corporation or special utility district may demonstrate by any reasonable means that a developer has been notified for purposes of this section, including:

(1) an agreement executed by the developer;

(2) correspondence with the developer that sets forth the subdivision service extension policy; or

(3) any other documentation that reasonably establishes that the developer should be aware of the subdivision service extension policy.

(d) This section does not limit or extend the jurisdiction of the utility commission under Section 13.043(g).

(e) For purposes of this section:

(1) "Developer" means a person who subdivides land or requests more than two water or sewer service connections on a single contiguous tract of land.

(2) "Service applicant" means a person, other than a developer, who applies for retail water or sewer utility service.

Added by Acts 1995, 74th Leg., ch. 400, Sec. 6, eff. Sept. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.51, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 51, eff. September 1, 2013.

Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE. Except as provided by Section 13.255, a utility or a water supply or sewer service corporation may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the utility commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certified area, after considering the factors under Section 13.246(c). The sale, assignment, or lease shall be on the conditions prescribed by the utility commission.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 17, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 28, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 8, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.52, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 52, eff. September 1, 2013.

Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY. If a retail public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the utility commission may issue an order prohibiting the construction, extension, or provision of service or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of the service.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 18, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 29, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.53, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 53, eff. September 1, 2013.

Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. (a) After notice and hearing, the utility commission or the commission may:

(1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in Section 16.341 to:

(A) provide specified improvements in its service in a defined area if service in that area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the retail public utility to provide the improved service; or

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the utility commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the utility's ability to operate the system in accordance with applicable laws and rules, in the form of a bond or other financial assurance in a form and amount specified by the utility commission;

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service;

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider; or

(4) issue an emergency order, with or without a hearing, under Section 13.041.

(b) If the utility commission has reason to believe that improvements and repairs to a water or sewer service system are

necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Section 341.0355, Health and Safety Code, or under this chapter, the utility commission, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a meeting of the utility commission, may immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the bond or other financial assurance in an amount determined by the utility commission not to exceed the amount of the bond or financial assurance. The order requiring the improvements may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard at a meeting of the utility commission. After notice and hearing, the utility commission may require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 19, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 30, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1010, Sec. 6.09, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.54, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 54, eff. September 1, 2013.

Sec. 13.254. DECERTIFICATION INITIATED BY UTILITY COMMISSION OR UTILITY; EXPEDITED RELEASE INITIATED BY LANDOWNER. (a) The utility commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if the utility commission finds that:

(1) the certificate holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate;

(2) in an affected county as defined in Section 16.341, the cost of providing service by the certificate holder is so

prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county as defined in Section 16.341, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; or

(4) the certificate holder has failed to file a cease and desist action pursuant to Section 13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days.

(a-1) As an alternative to decertification under Subsection (a), the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the utility commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. The fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of services from an alternative provider. On the day the petitioner submits the petition to the utility commission, the petitioner shall send, via certified mail, a copy of the petition to the certificate holder, who may submit information to the utility commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought;

(B) the timeframe within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area;

(D) the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder;

(E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested; and

(F) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the timeframe, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the utility commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service possesses the financial, managerial, and technical capability to provide continuous and adequate service within the timeframe, at the level, at the cost, and in the manner reasonably needed or requested by current and projected service demands in the area.

(a-2) A landowner is not entitled to file a petition under Subsection (a-1) or Section 13.2541 but is entitled to contest under Subsection (a) the involuntary certification of the landowner's property in a hearing held by the utility commission if the landowner's property is located:

(1) in the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(a-3) Within 60 calendar days from the date the utility commission determines the petition filed pursuant to Subsection (a-1) to be administratively complete, the utility commission shall grant the petition unless the utility commission makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The utility commission may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the utility commission may require an award of compensation as otherwise provided by this section.

(a-4) Chapter 2001, Government Code, does not apply to any petition filed under Subsection (a-1). The decision of the utility commission on the petition is final after any reconsideration authorized by the utility commission's rules and may not be appealed.

(a-7) The utility shall include with the statement of intent provided to each landowner or ratepayer a notice of:

(1) a proceeding under this section related to certification or decertification;

(2) the reason or reasons for the proposed rate change; and

(3) any bill payment assistance program available to low-income ratepayers.

(a-8) If a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under Subsection (a-1), the utility commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(a-9) Subsection (a-8) does not apply to a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to a county that borders the United Mexican States and the Gulf of Mexico.

(a-10) Subsection (a-8) does not apply to a county:

(1) with a population of more than 30,000 and less than 35,000 that borders the Red River; or

(2) with a population of more than 100,000 and less than

200,000 that borders a county described by Subdivision (1).

(a-11) Subsection (a-8) does not apply to a county:

(1) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

(2) with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

(b) Upon written request from the certificate holder, the utility commission may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a certificate of public convenience and necessity under Section 13.242(c).

(c) If the certificate of any retail public utility is revoked or amended, the utility commission may require one or more retail public utilities with their consent to provide service in the area in question. The order of the utility commission shall not be effective to transfer property.

(d) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section unless just and adequate compensation required under Subsection (g) has been paid to the decertified retail public utility.

(e) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided. The utility commission shall ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies the utility commission of its intent to provide service to the decertified area.

(f) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the utility commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth

in Chapter 21, Property Code, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors. The utility commission shall adopt rules governing the evaluation of these factors.

(g-1) If the retail public utilities cannot agree on an independent appraiser within 10 calendar days after the date on which the retail public utility notifies the utility commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the utility commission within 60 calendar days. After receiving the appraisals, the utility commission shall appoint a third appraiser who shall make a determination of the compensation within 30 days. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay half the cost of the third appraisal.

(h) A certificate holder that has land removed from its certificated service area in accordance with this section may not be required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or utility commission or commission rules by a water or sewer system of another person.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 20, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 31, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 652, Sec. 4, eff. Aug. 30, 1993; Acts

1997, 75th Leg., ch. 1010, Sec. 6.10, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 9, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 13(1), eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1325 (S.B. 573), Sec. 4, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.55, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 55, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 688 (S.B. 2272), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 688 (S.B. 2272), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 688 (S.B. 2272), Sec. 4, eff. September 1, 2019.

Sec. 13.2541. STREAMLINED EXPEDITED RELEASE INITIATED BY LANDOWNER. (a) Sections 13.254(a-7), (c), (d), and (h) apply to a proceeding under this section.

(b) As an alternative to decertification or expedited release under Section 13.254, the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity in the manner provided by this section and is entitled to that release if the landowner's property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,000 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more, and not in a county that has a population of more than 45,500 and less than 47,500.

(c) The utility commission shall grant the petition not later than the 60th day after the date the landowner files the petition.

(d) The utility commission may not deny the petition based on the fact that the certificate holder is a borrower under a federal

loan program.

(e) The certificate holder may not initiate an application to borrow money under a federal loan program after the date the petition is filed until the utility commission issues a decision on the petition.

(f) The utility commission may require an award of compensation by the petitioner to the certificate holder in the manner provided by this section.

(g) The monetary amount of compensation, if any, shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the certificate holder and the petitioner. The determination of compensation by the independent appraiser shall be binding on the utility commission. The costs of the independent appraiser shall be borne by the petitioner.

(h) Section 13.254(g) applies to a determination of the monetary amount of compensation under this section.

(i) If the petitioner and the certificate holder cannot agree on an independent appraiser within 10 calendar days after the date on which the utility commission approves the petition, the petitioner and the certificate holder shall each engage its own appraiser at its own expense, and each appraisal shall be submitted to the utility commission within 70 calendar days after the date on which the utility commission approves the petition. After receiving the appraisals, the utility commission shall appoint a third appraiser who shall make a determination of the compensation within 100 days after the date on which the utility commission approves the petition. The determination may not be less than the lower appraisal or more than the higher appraisal. The petitioner and the certificate holder shall each pay half the cost of the third appraisal.

(j) The utility commission shall ensure that:

(1) the monetary amount of compensation is determined not later than the 60th day after the date the utility commission receives the final appraisal; and

(2) the landowner pays the compensation to the certificate holder not later than the 90th calendar day after the date the monetary amount of compensation is determined.

Added by Acts 2019, 86th Leg., R.S., Ch. 688 (S.B. 2272), Sec. 3, eff. September 1, 2019.
Transferred, redesignated and amended by Acts 2019, 86th Leg., R.S.,

Ch. 688 (S.B. 2272), Sec. 4, eff. September 1, 2019.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 688 (S.B. 2272), Sec. 5, eff. September 1, 2019.

Sec. 13.255. SINGLE CERTIFICATION IN INCORPORATED OR ANNEXED AREAS. (a) In the event that an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides water or sewer service to all or part of the area pursuant to a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. In this section, the phrase "franchised utility" shall mean a retail public utility that has been granted a franchise by a municipality to provide water or sewer service inside municipal boundaries. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. If a franchised utility is to serve the area, the franchised utility shall also be a party to the agreement. The executed agreement shall be filed with the utility commission, and the utility commission, on receipt of the agreement, shall incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement.

(b) If an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if the municipality desires and intends to provide retail utility service to the area, the municipality, prior to providing service to the area, shall file an application with the utility commission to grant single certification to the municipally owned water or sewer utility or to a franchised utility. If an application for single certification is filed, the utility commission shall fix a time and place for a hearing and give notice of the hearing to the municipality and franchised utility, if any, and notice of the application and hearing to the retail public utility.

(c) The utility commission shall grant single certification to the municipality. The utility commission shall also determine

whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the utility commission shall also determine in its order the adequate and just compensation to be paid for such property pursuant to the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. The order of the utility commission shall not be effective to transfer property. A transfer of property may only be obtained under this section by a court judgment rendered pursuant to Subsection (d) or (e). The grant of single certification by the utility commission shall go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation pursuant to court order, or pays an amount into the registry of the court or to the retail public utility under Subsection (f). If the court judgment provides that the retail public utility is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final. The municipality or franchised utility must provide to each customer of the retail public utility being acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. The notice must clearly advise the customer of the identity of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates.

(d) In the event the final order of the utility commission is not appealed within 30 days, the municipality may request the district court of Travis County to enter a judgment consistent with the order of the utility commission. In such event, the court shall render a judgment that:

(1) transfers to the municipally owned utility or franchised utility title to property to be transferred to the municipally owned utility or franchised utility as delineated by the utility commission's final order and property determined by the utility commission to be rendered useless or valueless by the granting of single certification; and

(2) orders payment to the retail public utility of adequate and just compensation for the property as determined by the utility commission in its final order.

(e) Any party that is aggrieved by a final order of the utility commission under this section may file an appeal with the district court of Travis County within 30 days after the order becomes final. The hearing in such an appeal before the district court shall be by trial de novo on all issues. After the hearing, if the court determines that the municipally owned utility or franchised utility is entitled to single certification under the provisions of this section, the court shall enter a judgment that:

(1) transfers to the municipally owned utility or franchised utility title to property requested by the municipality to be transferred to the municipally owned utility or franchised utility and located within the singly certificated area and property determined by the court or jury to be rendered useless or valueless by the granting of single certification; and

(2) orders payment in accordance with Subsection (g) to the retail public utility of adequate and just compensation for the property transferred and for the property damaged as determined by the court or jury.

(f) Transfer of property shall be effective on the date the judgment becomes final. However, after the judgment of the court is entered, the municipality or franchised utility may take possession of condemned property pending appeal if the municipality or franchised utility pays the retail public utility or pays into the registry of the court, subject to withdrawal by the retail public utility, the amount, if any, established in the court's judgment as just and adequate compensation. To provide security in the event an appellate court, or the trial court in a new trial or on remand, awards compensation in excess of the original award, the municipality or franchised utility, as the case may be, shall deposit in the registry of the court an additional sum in the amount of the award, or a surety bond in the same amount issued by a surety company qualified to do business in this state, conditioned to secure the payment of an award of damages in excess of the original award of the trial court. On application by the municipality or franchised utility, the court shall order that funds deposited in the registry of the court be deposited in an interest-bearing account, and that interest accruing prior to withdrawal of the award by the retail

public utility be paid to the municipality or to the franchised utility. In the event the municipally owned utility or franchised utility takes possession of property or provides utility service in the singly certificated area pending appeal, and a court in a final judgment in an appeal under this section holds that the grant of single certification was in error, the retail public utility is entitled to seek compensation for any damages sustained by it in accordance with Subsection (g) of this section.

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain; the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate, shall, at a minimum, include: impact on the existing indebtedness of the retail public utility and its ability to repay that debt, the value of the service facilities of the retail public utility located within the area in question, the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question, the amount of the retail public utility's contractual obligations allocable to the area in question, any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the single certification, the impact on future revenues lost from existing customers, necessary and reasonable legal expenses and professional fees, factors relevant to maintaining the current financial integrity of the retail public utility, and other relevant factors.

(g-1) The utility commission shall adopt rules governing the evaluation of the factors to be considered in determining the monetary compensation under Subsection (g). The utility commission by rule shall adopt procedures to ensure that the total compensation to be paid to a retail public utility under Subsection (g) is determined not later than the 90th calendar day after the date on which the utility commission determines that the municipality's application is administratively complete.

(h) A municipality or a franchised utility may dismiss an application for single certification without prejudice at any time before a judgment becomes final provided the municipality or the

franchised public utility has not taken physical possession of property of the retail public utility or made payment for such right pursuant to Subsection (f) of this section.

(i) In the event that a municipality files an application for single certification on behalf of a franchised utility, the municipality shall be joined in such application by such franchised utility, and the franchised utility shall make all payments required in the court's judgment to adequately and justly compensate the retail public utility for any taking or damaging of property and for the transfer of property to such franchised utility.

(j) This section shall apply only in a case where:

(1) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a nonprofit water supply or sewer service corporation, a special utility district under Chapter 65, Water Code, or a fresh water supply district under Chapter 53, Water Code; or

(2) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a retail public utility, other than a nonprofit water supply or sewer service corporation, and whose service area is located entirely within the boundaries of a municipality with a population of 1.7 million or more according to the most recent federal census.

(k) The following conditions apply when a municipality or franchised utility makes an application to acquire the service area or facilities of a retail public utility described in Subsection (j)(2):

(1) the utility commission or court must determine that the service provided by the retail public utility is substandard or its rates are unreasonable in view of the reasonable expenses of the utility;

(2) if the municipality abandons its application, the court or the utility commission is authorized to award to the retail public utility its reasonable expenses related to the proceeding hereunder, including attorney fees; and

(3) unless otherwise agreed by the retail public utility, the municipality must take the entire utility property of the retail public utility in a proceeding hereunder.

(l) For an area incorporated by a municipality, the compensation provided under Subsection (g) shall be determined by a

qualified individual or firm to serve as independent appraiser, who shall be selected by the affected retail public utility, and the costs of the appraiser shall be paid by the municipality. For an area annexed by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to which the municipality and the retail public utility agree to serve as independent appraiser. If the retail public utility and the municipality are unable to agree on a single individual or firm to serve as the independent appraiser before the 11th day after the date the retail public utility or municipality notifies the other party of the impasse, the retail public utility and municipality each shall appoint a qualified individual or firm to serve as independent appraiser. On or before the 10th business day after the date of their appointment, the independent appraisers shall meet to reach an agreed determination of the amount of compensation. If the appraisers are unable to agree on a determination before the 16th business day after the date of their first meeting under this subsection, the retail public utility or municipality may petition the utility commission or a person the utility commission designates for the purpose to appoint a third qualified independent appraiser to reconcile the appraisals of the two originally appointed appraisers. The determination of the third appraiser may not be less than the lesser or more than the greater of the two original appraisals. The costs of the independent appraisers for an annexed area shall be shared equally by the retail public utility and the municipality. The determination of compensation under this subsection is binding on the utility commission.

(m) The utility commission shall deny an application for single certification by a municipality that fails to demonstrate compliance with the commission's minimum requirements for public drinking water systems.

Added by Acts 1987, 70th Leg., ch. 583, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 32, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 926, Sec. 1, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 814, Sec. 1 to 4, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 1374, Sec. 1, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 1375, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 10, eff.

September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.56, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 56, eff. September 1, 2013.

Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a condition to decertification or single certification under Section 13.254 or 13.255, and on request by an affected retail public utility, the utility commission may order:

(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and

(2) the transfer of the entire certificate of public convenience and necessity of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.

(b) The utility commission shall order service to the entire area under Subsection (a) if the utility commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(c) The utility commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

(3) establishing interim service rates for affected customers during specified times; and

(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(d) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the utility commission, if applicable.

(e) The utility commission shall not order compensation to the decertificated retail utility if service to the entire service area is ordered under this section.

Added by Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 11, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.57, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 57, eff. September 1, 2013.

Sec. 13.256. COUNTY FEE. (a) Notwithstanding any other provision of law, a county with a population of more than 2.8 million may not charge a water and sewer utility a fee for the privilege of installing or replacing a water or sewer line in the county's right-of-way.
(b) This section does not affect a franchise agreement or other contract entered into before September 1, 1995.

Added by Acts 1995, 74th Leg., ch. 628, Sec. 1, eff. Sept. 1, 1995.

Sec. 13.257. NOTICE TO PURCHASERS. (a) In this section, "utility service provider" means a retail public utility other than a district subject to Section 49.452 of this code.
(b) If a person proposes to sell or convey real property located in a certificated service area of a utility service provider, the person must give to the purchaser written notice as prescribed by this section. An executory contract for the purchase and sale of real property that has a performance period of more than six months is considered a sale of real property under this section.
(c) This section does not apply to:
(1) a transfer of title under any type of lien foreclosure;
(2) a transfer of title by deed in cancellation of indebtedness secured by a lien on the property conveyed;
(3) a transfer of title by reason of a will or probate proceeding;
(4) a transfer of title to or from a governmental entity;
(5) a transfer of title to property located within the

corporate limits of a municipality that is served by a municipally owned utility;

(6) a transfer of title to property that receives water or sewer service from a utility service provider on the date the property is transferred;

(7) a transfer of title by a trustee in bankruptcy;

(8) a transfer of title by a mortgagee or beneficiary under a deed of trust who acquired the property:

(A) at a sale conducted under a power of sale conferred by a deed of trust or other contract lien;

(B) at a sale under a court judgment foreclosing a lien; or

(C) by a deed in lieu of foreclosure;

(9) a transfer of title from one co-owner to another co-owner;

(10) a transfer of title between spouses or to a person in the lineal line of consanguinity of the transferor; or

(11) a transfer of a mineral interest, leasehold interest, or security interest.

(d) The notice must be executed by the seller and read as follows: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property.

"The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property.

_____

Date

_____

Signature of Purchaser

"Except for notices included as an addendum to or paragraph of a purchase contract, the notice must be executed by the seller and purchaser, as indicated."

(e) The notice must be given to the prospective purchaser before the execution of a binding contract of purchase and sale. The notice may be given separately or as an addendum to or paragraph of the contract. If the seller fails to provide the notice required by this section, the purchaser may terminate the contract. If the seller provides the notice at or before the closing of the purchase and sale contract and the purchaser elects to close even though the notice was not timely provided before the execution of the contract, it is conclusively presumed that the purchaser has waived all rights to terminate the contract and recover damages or pursue other remedies or rights under this section. Notwithstanding any provision of this section to the contrary, a seller, title insurance company, real estate broker, or examining attorney, or an agent, representative, or person acting on behalf of the seller, company, broker, or attorney, is not liable for damages under Subsection (m) or (n) or liable for any other damages to any person for:

(1) failing to provide the notice required by this section to a purchaser before the execution of a binding contract of purchase and sale or at or before the closing of the purchase and sale contract if:

(A) the utility service provider did not file the map of the certificated service area in the real property records of the county in which the service area is located and with the utility commission depicting the boundaries of the service area of the utility service provider as shown in the real property records of the county in which the service area is located; and

(B) the utility commission did not maintain an accurate map of the certificated service area of the utility service provider as required by this chapter; or

(2) unintentionally providing a notice required by this section that is incorrect under the circumstances before the execution of a binding contract of purchase and sale or at or before the closing of the purchase and sale contract.

(f) The purchaser shall sign the notice or the purchase and sale contract that includes the notice to evidence the purchaser's receipt of the notice.

(g) At the closing of the purchase and sale contract, a separate copy of the notice with current information shall be executed by the seller and purchaser, acknowledged, and subsequently recorded in the real property records of the county in which the property is located. In completing the notice to be executed by the seller and purchaser at the closing of the purchase and sale contract, any seller, title insurance company, real estate broker, or examining attorney, or any agent, representative, or person acting on behalf of the seller, company, broker, or attorney, may rely on the accuracy of the information required by this chapter that is last filed in the real property records by the utility service provider and the accuracy of the map of the certificated service area of the utility service provider. Any information taken from the map is, for purposes of this section, conclusively presumed to be correct as a matter of law. Any subsequent seller, purchaser, title insurance company, real estate broker, examining attorney, or lienholder may rely on the map of the certificated service area filed in the real property records by the utility service provider.

(h) In completing the notice required to be given to a prospective purchaser before the execution of a binding contract of purchase and sale, any seller, and any person completing the notice on behalf of the seller, may rely on the information contained in the map of the certificated service area filed in the real property records by the utility service provider. Any subsequent seller, purchaser, title insurance company, real estate broker, examining attorney, or lienholder may rely on the map of the certificated service area filed in the real property records by the utility service provider.

(i) If the notice is given at closing as provided by Subsection (g), a purchaser, or the purchaser's heirs, successors, or assigns, may not maintain an action for damages or maintain an action against a seller, title insurance company, real estate broker, or lienholder, or any agent, representative, or person acting on behalf of the seller, company, broker, or lienholder, by reason of the seller's use of the information filed with the utility commission by the utility service provider or the seller's use of the map of the certificated service area of the utility service provider filed in the real property records to determine whether the property to be purchased is within the certificated service area of the utility service provider. An action may not be maintained against a title insurance company for

the failure to disclose that the described real property is included within the certificated service area of a utility service provider if the utility service provider did not file in the real property records or with the utility commission the map of the certificated service area.

(j) Any purchaser who purchases real property in a certificated service area of a utility service provider and who subsequently sells or conveys the property is conclusively considered on the closing of the subsequent sale to have waived any previous right to damages under this section.

(k) It is the express intent of this section that any seller, title insurance company, examining attorney, vendor of property and tax information, real estate broker, or lienholder, or any agent, representative, or person acting on behalf of the seller, company, attorney, vendor, broker, or lienholder, may rely for the purpose of completing the notice required by this section on the accuracy of the map of the certificated service area of the utility service provider filed in the real property records by the utility service provider.

(l) Except as otherwise provided by Subsection (e), if any sale or conveyance of real property within the certificated service area of a utility service provider fails to comply with this section, the purchaser may file a suit for damages under Subsection (m) or (n).

(m) If the sale or conveyance of real property fails to comply with this section, the purchaser may file a suit for damages in the amount of all costs related to the purchase of the property plus interest and reasonable attorney's fees. The suit for damages may be filed jointly or severally against the individual or entity that sold or conveyed the property to the purchaser. Following the recovery of damages under this subsection, the amount of the damages shall be paid first to satisfy all unpaid obligations on each outstanding lien on the property and the remainder of the damage amount shall be paid to the purchaser. On payment of all damages respectively to each lienholder and the purchaser, the purchaser shall reconvey the property to the seller.

(n) If the sale or conveyance of the property fails to comply with this section, the purchaser may file a suit for damages in an amount not to exceed $5,000, plus reasonable attorney's fees.

(o) A purchaser may not recover damages under both Subsections (m) and (n). An entry of a final decision awarding damages to the purchaser under either Subsection (m) or (n) precludes the purchaser

from recovering damages under the other subsection. Notwithstanding general or special law or the common law of this state to the contrary, the relief provided under Subsections (m) and (n) provides the exclusive remedy for a purchaser aggrieved by the seller's failure to comply with this section. Any action for damages under this section does not apply to, affect, alter, or impair the validity of any existing vendor's lien, mechanic's lien, or deed of trust lien on the property.

(p) A suit for damages under this section must be filed by the earlier of:

(1) a date on or before the 90th day after the date the purchaser discovers:

(A) the cost the purchaser is required to pay to the utility service provider to obtain water or sewer service; or

(B) the period required by the utility service provider to provide water or sewer service; or

(2) the fourth anniversary of the date the property was sold or conveyed to the purchaser.

(q) Notwithstanding any other provision of this section to the contrary, a purchaser may not recover damages under this section if the person:

(1) purchases an equity interest in real property and, in conjunction with the purchase, assumes any liens, including a purchase money lien; and

(2) does not require proof of title by abstract, title insurance policy, or any other method.

(r) A utility service provider shall:

(1) record in the real property records of each county in which the service area or a portion of the service area is located a certified copy of the map of the certificate of public convenience and necessity and of any amendment to the certificate as contained in the utility commission's records, and a boundary description of the service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) if a recorded plat of the area exists, lot and block number; and

(2) submit to the utility commission evidence of the recording.

(s) Each county shall accept and file in its real property records a utility service provider's map presented to the county clerk under this section if the map meets filing requirements, does not exceed 11 inches by 17 inches in size, and is accompanied by the appropriate fee. The recording required by this section must be completed not later than the 31st day after the date a utility service provider receives a final order from the utility commission granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area.

Added by Acts 2001, 77th Leg., ch. 1068, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 12, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1004 (H.B. 4043), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.58, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 58, eff. September 1, 2013.

Sec. 13.258. UTILITY'S APPLICATION FOR AMENDMENT AND USE OF MUNICIPAL UTILITY DISTRICT'S CERTIFICATE UNDER CONTRACT. (a) Notwithstanding any other provision of this chapter, a Class A utility may apply to the utility commission for an amendment of a certificate of convenience and necessity held by a municipal utility district to allow the utility to have the same rights and powers under the certificate as the municipal utility district.

(b) This section does not apply to a certificate of convenience and necessity held by a municipal utility district located wholly or partly inside of the corporate limits or extraterritorial jurisdiction of a municipality with a population of two million or more.

(c) An application under this section must be accompanied by:

(1) information identifying the applicant;

(2) the identifying number of the certificate of

convenience and necessity to be amended;

(3) the written consent of the municipal utility district that holds the certificate of convenience and necessity;

(4) a written statement by the municipal utility district that the application is supported by a contract between the municipal utility district and the utility for the utility to provide services inside the certificated area and inside the boundaries of the municipal utility district; and

(5) a description of the proposed service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including roads, creeks, or railroad lines; or

(D) if a recorded plat of the area exists, lot and block number.

(d) For an application under this section, the utility commission may not require any information other than the information required by this section.

(e) Not later than the 60th day after the date an applicant files an application for an amendment under this section, the utility commission shall review whether the application is complete. If the utility commission finds that the application is complete, the utility commission shall:

(1) find that the amendment of the certificate is necessary for the service, accommodation, convenience, or safety of the public; and

(2) grant the application and amend the certificate.

(f) The utility commission's decision under this section becomes final after reconsideration, if any, authorized by utility commission rule, and may not be appealed.

(g) The consent of a municipality is not required for the utility commission to amend a certificate as provided by Subsection (a) for an area that is in the municipality's extraterritorial jurisdiction.

(h) Sections 13.241(d) and 13.245 do not apply to an application under this section.

(i) Chapter 2001, Government Code, does not apply to an application for an amendment of a certificate of convenience and necessity under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 948 (S.B. 1842), Sec. 4, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 11, eff. September 1, 2019.

SUBCHAPTER H. SALE OF PROPERTY AND MERGERS

Sec. 13.301. REPORT OF SALE, MERGER, ETC.; INVESTIGATION; DISALLOWANCE OF TRANSACTION. (a) A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system owned by an entity that is required by law to possess a certificate of public convenience and necessity or the effective date of a sale or acquisition of or merger or consolidation with such an entity, shall:

(1) file a written application with the utility commission; and

(2) unless public notice is waived by the utility commission for good cause shown, give public notice of the action.

(b) The utility commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability, the utility commission may require that the person provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure continuous and adequate utility service is provided.

(d) The utility commission shall, with or without a public hearing, investigate the sale, acquisition, lease, or rental to determine whether the transaction will serve the public interest.

(e) Before the expiration of the 120-day notification period, the utility commission shall notify all known parties to the transaction and the Office of Public Utility Counsel whether the utility commission will hold a public hearing to determine if the transaction will serve the public interest. The utility commission may hold a hearing if:

(1) the application filed with the utility commission or the public notice was improper;

(2) the person purchasing or acquiring the water or sewer system has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person;

(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of:

(A) noncompliance with the requirements of the utility commission, the commission, or the Department of State Health Services; or

(B) continuing mismanagement or misuse of revenues as a utility service provider;

(4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system; or

(5) there are concerns that the transaction may not serve the public interest, after the application of the considerations provided by Section 13.246(c) for determining whether to grant a certificate of convenience and necessity.

(f) Unless the utility commission holds a public hearing, the sale, acquisition, lease, or rental may be completed as proposed:

(1) at the end of the 120-day period; or

(2) at any time after the utility commission notifies the utility or water supply or sewer service corporation that a hearing will not be held.

(g) If the utility commission decides to hold a hearing or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, the sale, acquisition, lease, or rental may not be completed unless the utility commission determines that the proposed transaction serves the public interest.

(h) A sale, acquisition, lease, or rental of any water or sewer system owned by an entity required by law to possess a certificate of public convenience and necessity, or a sale or acquisition of or merger or consolidation with such an entity, that is not completed in accordance with the provisions of this section is void.

(i) This section does not apply to:

(1) the purchase of replacement property; or

(2) a transaction under Section 13.255 of this code.

(j) If a public utility facility or system is sold and the facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the public utility may not sell or transfer any of its assets, its certificate of convenience and necessity, or its controlling interest in an incorporated utility, unless the utility provides to the purchaser or transferee before the date of the sale or transfer a written disclosure relating to the contributions. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

(k) A utility or a water supply or sewer service corporation that proposes to sell, assign, lease, or rent its facilities shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, assign, lease, or rent its facilities.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 21, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 33, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 9, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 400, Sec. 7, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 6.11, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.59, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 59, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 7, eff. September 1, 2015.

Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC UTILITY: REPORT. (a) A utility may not purchase voting stock in

another utility doing business in this state and a person may not acquire a controlling interest in a utility doing business in this state unless the person or utility files a written application with the utility commission not later than the 61st day before the date on which the transaction is to occur.

(b) The utility commission may require that a person acquiring a controlling interest in a utility demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the utility commission may require that the person provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure continuous and adequate utility service is provided.

(d) The utility commission may hold a public hearing on the transaction if the utility commission believes that a criterion prescribed by Section 13.301(e) applies.

(e) Unless the utility commission holds a public hearing, the purchase or acquisition may be completed as proposed:

(1) at the end of the 60-day period; or

(2) at any time after the utility commission notifies the person or utility that a hearing will not be held.

(f) If the utility commission decides to hold a hearing or if the person or utility fails to make the application to the utility commission as required, the purchase or acquisition may not be completed unless the utility commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 34, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 10, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 6.12, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.60, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 60, eff. September 1, 2013.

Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may not loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the utility unless the utility reports the transaction to the utility commission within 60 days after the date of the transaction.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 35, eff. Sept. 1, 1989.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.61, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 61, eff. September 1, 2013.

Sec. 13.304. FORECLOSURE REPORT. (a) A utility that receives notice that all or a portion of the utility's facilities or property used to provide utility service are being posted for foreclosure shall notify the utility commission and the commission in writing of that fact not later than the 10th day after the date on which the utility receives the notice.

(b) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service is not required to provide the 120-day notice prescribed by Section 13.301, but shall provide written notice to the utility commission and the commission before the 30th day preceding the date on which the foreclosure is completed.

(c) The financial institution may operate the utility for an interim period prescribed by utility commission rule before transferring or otherwise obtaining a certificate of convenience and necessity. A financial institution that operates a utility during an interim period under this subsection is subject to each utility commission rule to which the utility was subject and in the same manner.

Added by Acts 1991, 72nd Leg., ch. 678, Sec. 11, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 400, Sec. 8, eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.62, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 62, eff. September 1, 2013.

Sec. 13.305. VOLUNTARY VALUATION OF ACQUIRED UTILITY OR FACILITIES. (a) In this section:

(1) "Acquiring utility" means a Class A or Class B utility that is acquiring a selling utility, or facilities of a selling utility, as the result of a voluntary arm's-length transaction.

(2) "Ratemaking rate base" means the dollar value of a selling utility that is incorporated into the rate base of the acquiring utility for postacquisition ratemaking purposes.

(3) "Selling utility" means a retail public utility that is being purchased by an acquiring utility, or is selling facilities to an acquiring utility, as the result of a voluntary arm's-length transaction.

(b) The utility commission shall maintain a list of experts qualified to conduct economic valuations of utilities for the purposes of this section.

(c) An acquiring utility and a selling utility may agree to determine by the following process the fair market value of the selling utility or the facilities to be sold, as applicable:

(1) the acquiring utility and the selling utility shall notify the utility commission of their intent to determine the fair market value under this section;

(2) not later than the 30th day after the date the utility commission receives notice under Subdivision (1), the utility commission shall select three utility valuation experts from the list maintained under Subsection (b);

(3) each utility valuation expert shall perform an appraisal in compliance with Uniform Standards of Professional Appraisal Practice, employing the cost, market, and income approaches, to determine the fair market value; and

(4) the three utility valuation experts selected under Subdivision (2) jointly shall retain a licensed engineer to conduct an assessment of the tangible assets of the selling utility, or the facilities to be sold, as applicable, and each utility valuation

expert shall:

(A) incorporate the assessment into the appraisal under the cost approach required under Subdivision (3); and

(B) provide the completed appraisal to the acquiring utility and the selling utility in a reasonable and timely manner.

(d) A utility valuation expert described by Subsection (b) may not:

(1) derive any material financial benefit from the sale other than fees for services rendered; or

(2) be or have been within the year preceding the date the service contract is executed an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility.

(e) A fee paid to a utility valuation expert may be included in the transaction and closing costs associated with the acquisition by the acquiring utility. A fee may not exceed the lesser of:

(1) five percent of the fair market value; or

(2) a fee amount approved by the utility commission.

(f) For the purposes of the acquisition, the fair market value is the average of the three utility valuation expert appraisals conducted under Subsection (c).

(g) For an acquisition of a selling utility, the ratemaking rate base of the selling utility is the lesser of the purchase price negotiated by the acquiring utility and the selling utility or the fair market value. The ratemaking rate base of the selling utility shall be incorporated into the rate base of the acquiring utility during the utility's next rate base case under Subchapter F.

(h) If the acquiring utility and the selling utility use the process for establishing fair market value in Subsection (c), the acquiring utility shall submit as attachments to an application required under Section 13.301:

(1) copies of the three appraisals performed by the utility valuation experts under Subsection (c);

(2) the purchase price agreed to by the acquiring utility and the selling utility;

(3) if applicable, the ratemaking rate base determined under Subsection (g);

(4) if applicable, the transaction and closing costs incurred by the acquiring utility that will be included in the utility's rate base; and

(5) if applicable, a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition.

(i) If the utility commission approves the application for acquisition under Section 13.301, the utility commission shall issue an order that includes:

(1) the ratemaking rate base of the selling utility as determined under Subsection (g); and

(2) any additional conditions for the acquisition the utility commission requires.

(j) A tariff submitted under Subsection (h)(5) shall remain in effect until the utility commission approves new rates as part of a rate base case proceeding.

(k) The original sources of funding for any part of the water or sewer assets of the selling utility are not relevant to determine the value of the selling utility's assets. The selling utility's cost of service shall be incorporated into the revenue requirement of the acquiring utility's next rate base case proceeding.

(l) In this subsection, "allowance of funds used during construction" means an accounting practice that recognizes the capital costs, including debt and equity funds, that are used to finance the construction costs of an improvement to a selling utility's assets by an acquiring utility. An acquiring utility's postacquisition improvements shall accrue an allowance of funds used during construction after the date the cost was incurred until the earlier of:

(1) the fourth anniversary of the date the asset entered into service; or

(2) the inclusion of the asset in the acquiring utility's next rate base case.

(m) Depreciation on an acquiring utility's postacquisition improvements shall be deferred for book and ratemaking purposes.

Added by Acts 2019, 86th Leg., R.S., Ch. 545 (H.B. 3542), Sec. 2, eff. September 1, 2019.

SUBCHAPTER I. RELATIONS WITH AFFILIATED INTERESTS

Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The utility commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the utility

commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.63, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 63, eff. September 1, 2013.

Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING SECURITIES. The utility commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.64, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 64, eff. September 1, 2013.

Sec. 13.343. WHOLESALE WATER CONTRACTS BETWEEN CERTAIN AFFILIATES. (a) The owner of a utility that supplies retail water service may not contract to purchase from an affiliated supplier wholesale water service for any of that owner's systems unless:

(1) the wholesale service is provided for not more than 90 days to remedy an emergency condition, as defined by utility commission or commission rule; or

(2) the utility commission determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

(b) The utility may not purchase groundwater from any provider if:

(1) the source of the groundwater is located in a priority groundwater management area; and

(2) a wholesale supply of surface water is available.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 10.07, eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.65, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 65, eff. September 1, 2013.

SUBCHAPTER J. JUDICIAL REVIEW

Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party to a proceeding before the utility commission or the commission is entitled to judicial review under the substantial evidence rule.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.66, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 66, eff. September 1, 2013.

Sec. 13.382. COSTS AND ATTORNEY'S FEES. (a) Any party represented by counsel who alleges that existing rates are excessive or that rates prescribed by the utility commission are excessive and who is a prevailing party in proceedings for review of a utility commission order or decision may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs incurred by him before the utility commission and the court. The amount of the attorney's fees shall be fixed by the court.

(b) On a finding by the court that an action under this subchapter was groundless and brought in bad faith and for the purpose of harassment, the court may award to the defendant retail

public utility reasonable attorney's fees.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 36, eff. Sept. 1, 1989.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.67, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 67, eff. September 1, 2013.

SUBCHAPTER K. VIOLATIONS AND ENFORCEMENT

Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a) If the utility commission or the commission has reason to believe that any retail public utility or any other person or corporation is engaged in or is about to engage in any act in violation of this chapter or of any order or rule of the utility commission or the commission entered or adopted under this chapter or that any retail public utility or any other person or corporation is failing to comply with this chapter or with any rule or order, the attorney general on request of the utility commission or the commission, in addition to any other remedies provided in this chapter, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the utility commission or the commission against the retail public utility or other person or corporation to enjoin the commencement or continuation of any act or to require compliance with this chapter or the rule or order.

(b) If the utility commission or the executive director of the commission has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, the utility commission or the executive director shall immediately:

(1) notify the utility's representative; and

(2) initiate enforcement action consistent with:

(A) this subchapter; and

(B) procedural rules adopted by the utility commission or the commission.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1,

1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 37, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1010, Sec. 6.30, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.68, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 68, eff. September 1, 2013.

Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER CHARGE; PENALTY. In regard to a customer complaint arising out of a charge made by a public utility, if the utility commission finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by the utility commission, the utility commission may issue an order requiring the utility to make the adjustment. Failure to comply with the order within 30 days of receiving the order is a violation for which the utility commission may impose an administrative penalty under Section 13.4151.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 20.01, eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.69, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 69, eff. September 1, 2013.

Sec. 13.412. RECEIVERSHIP. (a) At the request of the utility commission or the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

(1) has abandoned operation of its facilities;

(2) informs the utility commission or the commission that the owner is abandoning the system;

(3) violates a final order of the utility commission or the commission;

(4) allows any property owned or controlled by it to be

used in violation of a final order of the utility commission or the commission; or

(5) violates a final judgment issued by a district court in a suit brought by the attorney general under:

(A) this chapter;

(B) Chapter 7; or

(C) Chapter 341, Health and Safety Code.

(b) The court shall appoint a receiver if an appointment is necessary:

(1) to guarantee the collection of assessments, fees, penalties, or interest;

(2) to guarantee continuous and adequate service to the customers of the utility; or

(3) to prevent continued or repeated violation of the final order.

(c) The receiver shall execute a bond to assure the proper performance of the receiver's duties in an amount to be set by the court.

(d) After appointment and execution of bond, the receiver shall take possession of the assets of the utility specified by the court. Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the utility and shall strictly observe the final order involved.

(e) On a showing of good cause by the utility, the court may dissolve the receivership and order the assets and control of the business returned to the utility.

(f) For purposes of this section and Section 13.4132, abandonment may include but is not limited to:

(1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;

(2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;

(3) failure to adequately maintain facilities, resulting in potential health hazards, extended outages, or repeated service interruptions;

(4) failure to provide customers adequate notice of a health hazard or potential health hazard;

(5) failure to secure an alternative available water supply during an outage;

(6) displaying a pattern of hostility toward or repeatedly failing to respond to the utility commission or the commission or the utility's customers; and

(7) failure to provide the utility commission or the commission with adequate information on how to contact the utility for normal business and emergency purposes.

(g) Notwithstanding Section 64.021, Civil Practice and Remedies Code, a receiver appointed under this section may seek approval from the utility commission and the commission to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity. The receiver must apply in accordance with Subchapter H.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 678, Sec. 12, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 6.13, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.70, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 70, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 117 (H.B. 294), Sec. 1, eff. September 1, 2017.

Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The receiver may, subject to the approval of the court and after giving notice to all interested parties, sell or otherwise dispose of all or part of the real or personal property of a water or sewer utility against which a proceeding has been brought under this subchapter to pay the costs incurred in the operation of the receivership. The costs include:

(1) payment of fees to the receiver for his services;

(2) payment of fees to attorneys, accountants, engineers, or any other person or entity that provides goods or services necessary to the operation of the receivership; and

(3) payment of costs incurred in ensuring that any property

owned or controlled by a water or sewer utility is not used in violation of a final order of the utility commission or the commission.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.71, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 71, eff. September 1, 2013.

Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The utility commission, after providing to the utility notice and an opportunity for a hearing, may place a utility under supervision for gross or continuing mismanagement, gross or continuing noncompliance with this chapter or a rule adopted under this chapter, or noncompliance with an order issued under this chapter.

(b) While supervising a utility, the utility commission may require the utility to abide by conditions and requirements prescribed by the utility commission, including:

(1) management requirements;

(2) additional reporting requirements;

(3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets; and

(4) a requirement that the utility place the utility's funds into an account in a financial institution approved by the utility commission and use of those funds shall be restricted to reasonable and necessary utility expenses.

(c) While supervising a utility, the utility commission may require that the utility obtain approval from the utility commission before taking any action that may be restricted under Subsection (b). Any action or transaction which occurs without approval may be voided by the utility commission.

Added by Acts 1991, 72nd Leg., ch. 678, Sec. 13, eff. Sept. 1, 1991.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.72, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 72, eff. September 1, 2013.

Sec. 13.4132. OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. (a) The utility commission or the commission, after providing to the utility notice and an opportunity to be heard by the commissioners at a utility commission or commission meeting, may authorize a willing person to temporarily manage and operate a utility if the utility:

(1) has discontinued or abandoned operations or the provision of services;

(2) has been or is being referred to the attorney general for the appointment of a receiver under Section 13.412; or

(3) provides retail water or sewer utility service through fewer than 10,000 taps or connections and violates a final order of the commission by failing to:

(A) provide system capacity that is greater than the required raw water or groundwater production rate or the anticipated daily demand of the system;

(B) provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; or

(C) maintain accurate or properly calibrated testing equipment or other means of monitoring the effectiveness of a chemical treatment or pathogen inactivation or removal process.

(b) The utility commission or the commission may appoint a person under this section by emergency order, and notice of the action is adequate if the notice is mailed or hand-delivered to the last known address of the utility's headquarters.

(c) A person appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers, including the power and duty to:

(1) read meters;

(2) bill for utility services;

(3) collect revenues;

(4) disburse funds;

(5) access all system components; and

(6) request rate increases.

(d) This section does not affect the authority of the utility commission or the commission to pursue an enforcement claim against a utility or an affiliated interest.

Added by Acts 1991, 72nd Leg., ch. 678, Sec. 13, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.14, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.73, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 73, eff. September 1, 2013.
Acts 2019, 86th Leg., R.S., Ch. 545 (H.B. 3542), Sec. 3, eff. September 1, 2019.

Sec. 13.4133. EMERGENCY RATE INCREASE IN CERTAIN CIRCUMSTANCES. (a) Notwithstanding the requirements of Subchapter F, the utility commission may authorize an emergency rate increase for a utility for which a person has been appointed under Section 13.4132 or for which a receiver has been appointed under Section 13.412 if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers. The commission and utility commission shall coordinate as needed to carry out this section.

(b) A utility that receives an emergency rate increase under this section shall provide to each ratepayer notice of the increase as soon as possible, but not later than the first utility bill issued at the new rate.

(c) An emergency order may be issued under this section for a term not to exceed 15 months. The utility commission shall schedule a hearing to establish a final rate within 15 months after the date on which an emergency rate increase takes effect. The utility commission shall require the utility to provide notice of the hearing to each customer. The additional revenues collected under an emergency rate increase are subject to refund if the utility commission finds that the rate increase was larger than necessary to ensure continuous and adequate service.

Added by Acts 1991, 72nd Leg., ch. 678, Sec. 13, eff. Sept. 1, 1991.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.74, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 74, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 8, eff. September 1, 2015.

Sec. 13.414. PENALTY AGAINST RETAIL PUBLIC UTILITY OR AFFILIATED INTEREST. (a) Any retail public utility or affiliated interest that violates this chapter, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, direction, or requirement of the utility commission or the commission or decree or judgment of a court is subject to a civil penalty of not less than $100 nor more than $5,000 for each violation.

(b) A retail public utility or affiliated interest commits a separate violation each day it continues to violate Subsection (a) of this section.

(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the utility commission or the commission in a court of competent jurisdiction to recover the penalty under this section.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 38, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 14, eff. Sept. 1, 1991. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.75, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 75, eff. September 1, 2013.

Sec. 13.415. PERSONAL PENALTY. Any person who wilfully and knowingly violates this chapter is guilty of a third degree felony.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Sec. 13.4151. ADMINISTRATIVE PENALTY. (a) If a person, affiliated interest, or entity subject to the jurisdiction of the

utility commission or the commission violates this chapter or a rule or order adopted under this chapter, the utility commission or the commission, as applicable, may assess a penalty against that person, affiliated interest, or entity as provided by this section. The penalty may be in an amount not to exceed $5,000 a day. Each day a violation continues may be considered a separate violation.

(b) In determining the amount of the penalty, the utility commission or the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violations; and

(3) any other matters that justice requires.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the utility commission or the executive director of the commission concludes that a violation has occurred, the utility commission or the executive director may issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person, affiliated interest, or retail public utility charged, and recommending the amount of that proposed penalty. The utility commission or the executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (b), and shall analyze each factor for the benefit of the appropriate agency.

(d) Not later than the 10th day after the date on which the report is issued, the utility commission or the executive director of the commission shall give written notice of the report to the person, affiliated interest, or retail public utility charged with the

violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person, affiliated interest, or retail public utility charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) Not later than the 20th day after the date on which notice is received, the person, affiliated interest, or retail public utility charged may give the appropriate agency written consent to the report described by Subsection (c), including the recommended penalty, or may make a written request for a hearing.

(f) If the person, affiliated interest, or retail public utility charged with the violation consents to the penalty recommended in the report described by Subsection (c) or fails to timely respond to the notice, the utility commission or the commission by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the report. If the utility commission or the commission assesses the penalty recommended by the report, the utility commission or the commission shall give written notice to the person, affiliated interest, or retail public utility charged of its decision.

(g) If the person, affiliated interest, or retail public utility charged requests or the utility commission or the commission orders a hearing, the appropriate agency shall call a hearing and give notice of the hearing. As a result of the hearing, the appropriate agency by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the appropriate agency shall analyze each of the factors provided by Subsection (b).

(h) The utility commission or the commission shall give notice of its decision to the person, affiliated interest, or retail public utility charged, and if the appropriate agency finds that a violation has occurred and has assessed a penalty, that agency shall give written notice to the person, affiliated interest, or retail public utility charged of its findings, of the amount of the penalty, and of the person's, affiliated interest's, or retail public utility's right to judicial review of the agency's order. If the utility commission or the commission is required to give notice of a penalty under this

subsection or Subsection (f), the appropriate agency shall file notice of that agency's decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(i) Within the 30-day period immediately following the day on which the utility commission's or commission's order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person, affiliated interest, or retail public utility charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person, affiliated interest, or retail public utility seeks judicial review of the fact of the violation, the amount of the penalty, or both:

(A) forward the amount of the penalty to the appropriate agency for placement in an escrow account; or

(B) post with the appropriate agency a supersedeas bond in a form approved by the agency for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(j) Failure to forward the money to or to post the bond with the utility commission or the commission within the time provided by Subsection (i) constitutes a waiver of all legal rights to judicial review. If the person, affiliated interest, or retail public utility charged fails to forward the money or post the bond as provided by Subsection (i), the appropriate agency or the executive director of that agency may forward the matter to the attorney general for enforcement.

(k) Judicial review of the order or decision of the utility commission or the commission assessing the penalty shall be under the substantial evidence rule and may be instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(l) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(m) Notwithstanding any other provision of law, the utility commission or the commission may compromise, modify, extend the time for payment of, or remit, with or without condition, any penalty imposed under this section.

(n) Payment of a penalty under this section is full and complete satisfaction of the violation for which the penalty is assessed and precludes any other civil or criminal penalty for the

same violation.

Added by Acts 1987, 70th Leg., ch. 539, Sec. 22, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 39, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 15, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.12, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.76, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 76, eff. September 1, 2013.

Sec. 13.416. PENALTIES CUMULATIVE. All penalties accruing under this chapter are cumulative and a suit for the recovery of any penalty does not bar or affect the recovery of any other penalty or bar any criminal prosecution against any retail public utility or any officer, director, agent, or employee or any other corporation or person.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 40, eff. Sept. 1, 1989.

Sec. 13.417. CONTEMPT PROCEEDINGS. If any person or retail public utility fails to comply with any lawful order of the utility commission or the commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the utility commission or the commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 41, eff. Sept. 1, 1989.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.77, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 77, eff. September 1, 2013.

Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER UTILITY IMPROVEMENT ACCOUNT. (a) Fines and penalties collected under this chapter from a retail public utility that is not a public utility in other than criminal proceedings shall be deposited in the general revenue fund.

(b) Fines and penalties collected from a public utility under this chapter in other than criminal proceedings shall be deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.31, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.78, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 78, eff. September 1, 2013.

Sec. 13.419. VENUE. Suits for injunction or penalties under this chapter may be brought in Travis County, in any county where this violation is alleged to have occurred, or in the county or residence of any defendant.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

SUBCHAPTER K-1. EMERGENCY ORDERS

Sec. 13.451. ISSUANCE OF EMERGENCY ORDER. (a) The utility commission may issue an emergency order authorized under this chapter after providing the notice and opportunity for a hearing that the utility commission considers practicable under the circumstances or without notice or opportunity for a hearing. If the utility commission considers the provision of notice and opportunity for a

hearing practicable, the utility commission shall provide the notice not later than the 10th day before the date set for the hearing.

(b) The utility commission by order or rule may delegate to the utility commission's executive director the authority to:

(1) receive applications and issue emergency orders under this subchapter; and

(2) authorize, in writing, a representative or representatives to act on the utility commission's executive director's behalf under this subchapter.

(c) Chapter 2001, Government Code, does not apply to the issuance of an emergency order under this subchapter without a hearing.

(d) A law under which the utility commission acts that requires notice of hearing or that prescribes procedures for the issuance of emergency orders does not apply to a hearing on an emergency order issued under this subchapter unless the law specifically requires notice for an emergency order. The utility commission shall give notice of the hearing as it determines is practicable under the circumstances.

(e) An emergency order issued under this subchapter does not vest any rights in a person affected by the order and the order expires according to its terms.

(f) The utility commission may adopt rules necessary to administer this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 9, eff. September 1, 2015.

Sec. 13.452. APPLICATION FOR EMERGENCY ORDER. A person other than the utility commission or the staff of the utility commission who desires the issuance of an emergency order under this subchapter must submit a sworn written application to the utility commission. The application must:

(1) describe the emergency condition or other condition justifying the issuance of the order;

(2) allege facts to support the findings required under this subchapter;

(3) estimate the dates on which the proposed order should begin and end;

(4) describe the action sought and the activity proposed to be allowed, mandated, or prohibited; and

(5) include any other statement, including who must sign the application for the order, and any information required by the utility commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 9, eff. September 1, 2015.

Sec. 13.453. NOTICE OF ISSUANCE. Notice of the issuance of an emergency order must be provided as required by utility commission rule.

Added by Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 9, eff. September 1, 2015.

Sec. 13.454. HEARING TO AFFIRM, MODIFY, OR SET ASIDE ORDER. (a) If the utility commission or the utility commission's executive director issues an emergency order under this subchapter without a hearing, a hearing must be held to affirm, modify, or set aside the emergency order unless the person affected by the order waives the right to a hearing. If the person does not waive the right to a hearing, the utility commission or the utility commission's executive director shall set a time and place for a hearing to be held before the utility commission or the State Office of Administrative Hearings, which must be as soon as practicable after the order is issued.

(b) At a hearing required under Subsection (a), or within a reasonable time after the hearing, the utility commission shall affirm, modify, or set aside the emergency order.

(c) A hearing to affirm, modify, or set aside an emergency order must be conducted in accordance with Chapter 2001, Government Code, and utility commission rules. Utility commission rules relating to a hearing to affirm, modify, or set aside an emergency order must provide for presentation of evidence by the applicant, if any, under oath, presentation of rebuttal evidence under oath, and cross-examination of witnesses under oath.

Added by Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 9, eff.

September 1, 2015.

Sec. 13.455. TERM OF ORDER. An emergency order issued under this subchapter must be limited to a reasonable time as specified in the order. Except as otherwise provided by this chapter, the term of an emergency order may not exceed 180 days. An emergency order may be renewed once for a period not to exceed 180 days.

Added by Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 9, eff. September 1, 2015.

SUBCHAPTER M. SUBMETERING AND NONSUBMETERING FOR APARTMENTS AND MANUFACTURED HOME RENTAL COMMUNITIES AND OTHER MULTIPLE USE FACILITIES

Sec. 13.501. DEFINITIONS. In this subchapter:

(1) "Apartment house" means one or more buildings containing five or more dwelling units which are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied, and having rental paid, if a dwelling unit is rented, at intervals of one month or longer.

(1-a) "Condominium manager" or "manager of a condominium" means a condominium unit owners' association organized under Section 82.101, Property Code, or an incorporated or unincorporated entity comprising the council of owners under Chapter 81, Property Code.

(2) "Dwelling unit" means:

(A) one or more rooms in an apartment house or condominium, suitable for occupancy as a residence, and containing kitchen and bathroom facilities; or

(B) a manufactured home in a manufactured home rental community.

(3) "Customer" means the individual, firm, or corporation in whose name a master meter has been connected by the utility service provider.

(4) "Nonsubmetered master metered utility service" means water utility service that is master metered for the apartment house but not submetered, and wastewater utility service based on master metered water utility service.

(5) "Owner" means the legal titleholder of an apartment

house, manufactured home rental community, or multiple use facility and any individual, firm, or corporation expressly identified in a lease agreement as the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility. The term does not include the manager of an apartment home unless the manager is expressly identified as the landlord in the lease agreement.

(6) "Tenant" means a person who is entitled to occupy a dwelling unit or multiple use facility unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

(7) "Multiple use facility" means commercial or industrial parks, office complexes, marinas, and others specifically identified in utility commission rules with five or more units.

(8) "Manufactured home rental community" means a property on which spaces are rented for the occupancy of manufactured homes for nontransient residential use and for which rental is paid at intervals of one month or longer.

(9) "Utility costs" or "utility service costs" means any amount charged to the owner by a retail public utility for water or wastewater service.

Amended by Acts 1989, 71st Leg., ch. 567, Sec. 43, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 86, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.79, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 79, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 389 (S.B. 873), Sec. 1, eff. June 1, 2017.

Sec. 13.502. SUBMETERING. (a) An apartment house owner, manufactured home rental community owner, multiple use facility owner, or condominium manager may provide for submetering of each dwelling unit or rental unit for the measurement of the quantity of water, if any, consumed by the occupants of that unit.

(b) Except as provided by Subsections (c) and (d), a manager of a condominium or the owner of an apartment house, manufactured home

rental community, or multiple use facility, on which construction begins after January 1, 2003, shall provide for the measurement of the quantity of water, if any, consumed by the occupants of each unit through the installation of:

(1) submeters, owned by the property owner or manager, for each dwelling unit or rental unit; or

(2) individual meters, owned by the retail public utility, for each dwelling unit or rental unit.

(c) An owner of an apartment house on which construction begins after January 1, 2003, and which provides government assisted or subsidized rental housing to low or very low income residents shall install a plumbing system in the apartment house that is compatible with the installation of submeters for the measurement of the quantity of water, if any, consumed by the occupants of each unit.

(d) On request by the property owner or manager, a retail public utility shall install individual meters owned by the utility in an apartment house, manufactured home rental community, multiple use facility, or condominium on which construction begins after January 1, 2003, unless the retail public utility determines that installation of meters is not feasible. If the retail public utility determines that installation of meters is not feasible, the property owner or manager shall install a plumbing system that is compatible with the installation of submeters or individual meters. A retail public utility may charge reasonable costs to install individual meters.

(e) An owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may not change from submetered billing to allocated billing unless:

(1) the utility commission approves of the change in writing after a demonstration of good cause, including meter reading or billing problems that could not feasibly be corrected or equipment failures; and

(2) the property owner meets rental agreement requirements established by the utility commission.

Amended by Acts 1989, 71st Leg., ch. 567, Sec. 43, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 86, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 873, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.80, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 80, eff. September 1, 2013.

Sec. 13.503. SUBMETERING RULES. (a) The utility commission shall encourage submetering of individual rental or dwelling units by master meter operators or building owners to enhance the conservation of water resources.

(b) Notwithstanding any other law, the utility commission shall adopt rules and standards under which an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility that is not individually metered for water for each rental or dwelling unit may install submetering equipment for each individual rental or dwelling unit for the purpose of fairly allocating the cost of each individual rental or dwelling unit's water consumption, including wastewater charges based on water consumption. In addition to other appropriate safeguards for the tenant, the rules shall require that, except as provided by this section, an apartment house owner, manufactured home rental community owner, multiple use facility owner, or condominium manager may not impose on the tenant any extra charges, over and above the cost per gallon and any other applicable taxes and surcharges that are charged by the retail public utility to the owner or manager, and that the rental unit or apartment house owner or manager shall maintain adequate records regarding submetering and make the records available for inspection by the tenant during reasonable business hours. The rules shall allow an owner or manager to charge a tenant a fee for late payment of a submetered water bill if the amount of the fee does not exceed five percent of the bill paid late. All submetering equipment is subject to the rules and standards established by the utility commission for accuracy, testing, and record keeping of meters installed by utilities and to the meter-testing requirements of Section 13.140.

(c) Except as provided by Subsection (c-1), in addition to the charges permitted under Subsection (b), the rules shall authorize the owner or manager of a manufactured home rental community or apartment house to impose a service charge of not more than nine percent of the costs related to submetering allocated to each submetered rental or dwelling unit.

(c-1) The rules may not authorize the owner or manager of an apartment house to impose a service charge under Subsection (c) on a resident who:

(1) resides in a unit of an apartment house that has received an allocation of low income housing tax credits under Subchapter DD, Chapter 2306, Government Code; or

(2) receives tenant-based voucher assistance under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

(d) For purposes of Subsection (c), "costs related to submetering" means water costs as well as any other applicable taxes and surcharges that are charged by the retail public utility to the owner or manager of a manufactured home rental community or apartment house.

(e) The utility commission may authorize a building owner to use submetering equipment that relies on integrated radio based meter reading systems and remote registration in a building plumbing system using submeters that comply with nationally recognized plumbing standards and are as accurate as utility water meters in single application conditions.

(f) This section does not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating to the upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to utility costs.

Amended by Acts 1989, 71st Leg., ch. 567, Sec. 43, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 86, Sec. 1, eff. Aug. 30, 1999; Acts 2003, 78th Leg., ch. 673, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 151 (S.B. 2126), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.81, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 81, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 389 (S.B. 873), Sec. 2, eff. June 1, 2017.

Sec. 13.5031. NONSUBMETERING RULES. (a) Notwithstanding any other law, the utility commission shall adopt rules and standards governing billing systems or methods used by manufactured home rental community owners, apartment house owners, condominium managers, or owners of other multiple use facilities for prorating or allocating among tenants nonsubmetered master metered utility service costs. In addition to other appropriate safeguards for the tenant, those rules shall require that:

(1) the rental agreement contain a clear written description of the method of calculation of the allocation of nonsubmetered master metered utilities for the manufactured home rental community, apartment house, or multiple use facility;

(2) the rental agreement contain a statement of the average manufactured home, apartment, or multiple use facility unit monthly bill for all units for any allocation of those utilities for the previous calendar year;

(3) except as provided by this section, an owner or condominium manager may not impose additional charges on a tenant in excess of the actual charges imposed on the owner or condominium manager for utility consumption by the manufactured home rental community, apartment house, or multiple use facility;

(4) the owner or condominium manager shall maintain adequate records regarding the utility consumption of the manufactured home rental community, apartment house, or multiple use facility, the charges assessed by the retail public utility, and the allocation of the utility costs to the tenants;

(5) the owner or condominium manager shall maintain all necessary records concerning utility allocations, including the retail public utility's bills, and shall make the records available for inspection by the tenants during normal business hours; and

(6) the owner or condominium manager may charge a tenant a fee for late payment of an allocated water bill if the amount of the fee does not exceed five percent of the bill paid late.

(b) This section does not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating to the upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to utility costs.

Added by Acts 1989, 71st Leg., ch. 567, Sec. 43, eff. Sept. 1, 1989.
Amended by Acts 1999, 76th Leg., ch. 86, Sec. 1, eff. Aug. 30, 1999; Acts 2003, 78th Leg., ch. 673, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.82, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 82, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 389 (S.B. 873), Sec. 3, eff. June 1, 2017.

Sec. 13.504. IMPROPER RENTAL RATE INCREASE. If, during the 90-day period preceding the installation of individual meters or submeters, an owner, operator, or manager of an apartment house, manufactured home rental community, or other multiple use facility has increased rental rates and the increase is attributable to increased costs of utilities, the owner, operator, or manager shall immediately reduce the rental rate by the amount of the increase and refund all of the increase that has previously been collected within the 90-day period.

Amended by Acts 1987, 70th Leg., ch. 539, Sec. 26, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 43, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 86, Sec. 1, eff. Aug. 30, 1999.

Sec. 13.505. RESTITUTION. (a) In this section, "overcharge" means the amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit after a violation occurred relating to the assessment of a portion of utility costs in excess of the amount the tenant would have been charged under this subchapter.

(b) The utility commission has exclusive jurisdiction for violations under this subchapter.

(c) If an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a rule of the utility commission regarding utility costs, the person claiming the violation may file a complaint with the utility commission. The utility commission and State Office

of Administrative Hearings shall establish an online and telephone formal complaint and hearing system through which a person may file a complaint under this subchapter and may appear remotely for a hearing before the utility commission or the State Office of Administrative Hearings. If the utility commission determines that the owner or condominium manager overcharged a complaining tenant for water or wastewater service from the retail public utility, the utility commission shall require the owner or condominium manager, as applicable, to repay the complaining tenant the amount overcharged.

(d) Nothing in this section limits or impairs the utility commission's enforcement authority under Subchapter K. The utility commission may assess an administrative penalty under Section 13.4151 for a violation of this chapter or of any rule adopted under this chapter.

Amended by Acts 1987, 70th Leg., ch. 539, Sec. 26, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 43, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 86, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.83, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 83, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 389 (S.B. 873), Sec. 4, eff. June 1, 2017.

Sec. 13.506. PLUMBING FIXTURES. (a) After January 1, 2003, before an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may implement a program to bill tenants for submetered or allocated water service, the owner or manager must:

(1) meet the standards prescribed by Section 372.002, Health and Safety Code, for sink or lavatory faucets, faucet aerators, and showerheads; and

(2) perform a water leak audit of each dwelling unit or rental unit and each common area and repair any leaks found.

(b) Not later than the first anniversary of the date an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium begins to bill

for submetered or allocated water service under Subsection (a), the owner or manager shall:

(1) remove any toilets that exceed a maximum flow of 3.5 gallons of water per flushing; and

(2) install toilets that meet the standards prescribed by Section 372.002, Health and Safety Code.

(c) Subsections (a) and (b) do not apply to a manufactured home rental community owner who does not own the manufactured homes located on the property of the manufactured home rental community.

Added by Acts 2001, 77th Leg., ch. 873, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 5, eff. September 1, 2009.

SUBCHAPTER N. PRIVATIZATION CONTRACTS

Sec. 13.511. DEFINITIONS. In this subchapter:

(1) "Eligible city" means any municipality whose waterworks and sewer system is operated by a board of utility trustees pursuant to provisions of a home-rule charter.

(2) "Privatization contract" means any contract, agreement, or letter of intent or group of the same by which any eligible city contracts with a service provider to provide for the financing, acquisition, improvement, or construction of sewage treatment and disposal facilities pursuant to which such service provider or its assignee or subcontractor will own, operate, and maintain such facilities and provide sewage treatment and disposal services to the eligible city or any contract pursuant to which such service provider agrees to operate and maintain, or have its subcontractor operate and maintain all or any part of the eligible city's sewage treatment and disposal facilities.

(3) "Service provider" means any person or group of persons who is a party to a privatization contract which thereby contracts to provide sewage treatment and disposal services to an eligible city.

Added by Acts 1987, 70th Leg., ch. 88, Sec. 1, eff. May 14, 1987. Renumbered from Sec. 13.501 and amended by Acts 1989, 71st Leg., ch. 567, Sec. 44, eff. Sept. 1, 1989.

Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION CONTRACTS. Any eligible city is authorized to enter into privatization contracts if such action is recommended by the board of utility trustees and authorized by the governing body of the eligible city pursuant to an ordinance. Any privatization contract entered into prior to the effective date of this Act is validated, ratified, and approved. Each eligible city shall file a copy of its privatization contract with the utility commission, for information purposes only, within 60 days of execution or the effective date of this Act, whichever is later.

Added by Acts 1987, 70th Leg., ch. 88, Sec. 1, eff. May 14, 1987.
Renumbered from Sec. 13.502 by Acts 1989, 71st Leg., ch. 567, Sec. 44, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.84, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 84, eff. September 1, 2013.

Sec. 13.513. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE PROVIDER FROM UTILITY COMMISSION JURISDICTION. A service provider shall not constitute a "water and sewer utility," a "public utility," a "utility," or a "retail public utility" within the meaning of this chapter as a result of entering into or performing a privatization contract, if the governing body of the eligible city shall so elect by ordinance and provide notice thereof in writing to the utility commission; provided, however, this provision shall not affect the application of this chapter to an eligible city itself. Notwithstanding anything contained in this section, any service provider who seeks to extend or render sewer service to any person or municipality other than, or in addition to, an eligible city may be a "public utility" for the purposes of this chapter with respect to such other person or municipality.

Added by Acts 1987, 70th Leg., ch. 88, Sec. 1, eff. May 14, 1987.
Renumbered from Sec. 13.503 by Acts 1989, 71st Leg., ch. 567, Sec. 44, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.85, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 85, eff. September 1, 2013.

Sec. 13.514. TERM AND PROVISIONS OF A PRIVATIZATION CONTRACT. A privatization contract may be for a term and contain provisions that the governing body of an eligible city determines are in the best interests of the eligible city, including provisions relating to allocation of liabilities, indemnification, and purchase of all or a portion of the facilities.

Added by Acts 1989, 71st Leg., ch. 567, Sec. 44, eff. Sept. 1, 1989.

Sec. 13.515. PAYMENTS UNDER A PRIVATIZATION CONTRACT. Payments by an eligible city under a privatization contract shall, if so provided, constitute an operating expense of the eligible city's sanitary sewer system or combined waterworks and sanitary sewer system, except that any payment for purchase of the facilities is payable from a pledge and lien on the net revenues of the eligible city's sanitary sewer system or combined waterworks and sanitary sewer system.

Added by Acts 1989, 71st Leg., ch. 567, Sec. 44, eff. Sept. 1, 1989.

SUBTITLE C. WATER DEVELOPMENT
CHAPTER 15. TEXAS WATER ASSISTANCE PROGRAM
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 15.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(4) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(5) "Political subdivision" means a city, county, district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, any other political

subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Chapter 67.

(6) "Project" means:

(A) any undertaking or work, including planning activities and work to obtain regulatory authority at the local, state, and federal level, to conserve, convey, and develop water resources in the state, to provide for the maintenance and enhancement of the quality of the water of the state, to provide nonstructural and structural flood control, drainage, subsidence control, recharge, chloride control, brush control, precipitation enhancement, and desalinization, to provide for the acquisition of water rights and the repair of unsafe dams, and to carry out other purposes defined by board rules;

(B) any undertaking or work outside the state to provide for the maintenance and enhancement of the quality of water by eliminating saline inflow through well pumping and deep well injection of brine; or

(C) any undertaking or work by Texas political subdivisions or institutions of higher education to conserve, convey, and develop water resources in areas outside Texas or to provide for the maintenance and enhancement of the quality of the water in areas adjoining Texas, if such undertaking or work will result in water being available for use in or for the benefit of Texas or will maintain and enhance the quality of water in Texas.

(7) "Fund" means the water assistance fund.

(8) "Loan fund" means the water loan assistance fund.

(9) "Conservation" means:

(A) the development of water resources; and

(B) those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(10) "Federal agency" means any federal agency, including the United States Secretary of State, that may act or that is acting through the American Commissioner on the International Boundary and Water Commission, United States and Mexico.

(11) "Economically distressed area" means:

(A) an area in which water supply or sewer services are

inadequate to meet minimal needs of residential users as defined by board rules and in which financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; or

(B) for purposes of any federal funds for colonias deposited in the water assistance fund, an area that meets the federal criteria for use of such funds.

(12) "Nonborder colonia" means a residential community:

(A) located in an unincorporated area of a county all parts of which are at least 150 miles from the international border of this state;

(B) in which water or wastewater services are inadequate to meet minimal needs of residential users as defined by board rules;

(C) in which the average household income is less than the average household income for the county in which the community is located; and

(D) that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood.

(13) "Regionalization" means development of a water supply or wastewater collection and treatment system that incorporates multiple service areas into an areawide service facility or any such system that serves an area that includes more than a single county, city, special district, or other political subdivision of the state.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 1.06; Acts 1985, 69th Leg., ch. 133, Sec. 2.01; Acts 1985, 69th Leg., ch. 795, Sec. 1.038, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 821, Sec. 1, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 8, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.01, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.059, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 844, Sec. 2, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 1010, Sec. 4.07, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.54, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 4.04, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1367, Sec. 11.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1275, Sec. 2(141), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 341 (S.B. 99), Sec. 14, eff. June 15, 2007.

Sec. 15.002. PURPOSE. (a) The legislature finds that it is in the public interest and to the benefit of the general public of the state to encourage and to assist in the planning and construction of projects to develop and conserve the storm water and floodwater as well as the ordinary flows of the rivers and streams of the state, to maintain and enhance the quality of the water of the state, to provide protection to the state's citizens from the floodwater of the rivers and streams of the state, to provide drainage, subsidence control, public beach nourishment, recharge, chloride control, brush control, weather modification, regionalization, and desalination, to provide for the management of aquatic vegetation, and other purposes as provided by law or board rule.

(b) The legislature finds that the conventional means of financing projects are inadequate to meet current and anticipated needs of the state. Therefore, it is the further intent of the legislature to provide a means of coordinating the development of projects through the board and to provide political subdivisions the maximum opportunity to finance projects through programs provided by this chapter. Projects may be in the state or outside the state, provided that out-of-state projects must be funded through a Texas political subdivision or an institution of higher education and must result in water being available for use in or for the benefit of Texas or maintain and enhance the quality of water in Texas.

(c) The legislature finds that serious health and sanitation problems face the citizens of this state from discharges of untreated and treated waste water into the Rio Grande. It is the intent of the legislature to provide a means of coordinating and financing the development of waste water treatment projects through cooperative efforts between this state, the United States, and the Republic of Mexico to improve the quality of water being discharged into the Rio Grande.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 2.02; Acts 1989, 71st Leg., ch. 624, Sec. 2.02, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 295, Sec. 41, eff. June 7, 1991; Acts 1997,

75th Leg., ch. 1010, Sec. 4.08, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1461, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 4.05, eff. Sept. 1, 2001.

Sec. 15.003. POWER TO DEFINE PURPOSES. The board, by rule, may define in greater detail the purposes enumerated in Section 15.002.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.004. TRANSBASIN DIVERSION. Money on deposit in a fund created under Article III, Section 49-d-3, of the Texas Constitution shall not be used to finance or in aid of any project under this chapter that contemplates or results in the removal from the basin of origin of any surface water necessary to supply the reasonably foreseeable future water requirements for the next ensuing 50-year period within the river basin of origin, except on a temporary, interim basis.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 2.03.

Sec. 15.005. CONSIDERATION OF CERTAIN APPLICATIONS. (a) On submission of a project application under this chapter, the executive administrator shall determine if the application includes a project that will have flood control as one of its purposes and if the political subdivision submitting the application includes all of the watershed in which the project is to be located.

(b) If the executive administrator finds that the application includes a project that has flood control as one of its purposes and that the watershed in which the project is located is partially located outside the political subdivision making the application, the executive administrator shall require the applicant to submit a written memorandum of understanding relating to the management of the watershed in which the project is to be located.

(c) The memorandum of understanding must be approved by all governing bodies of political subdivisions located in the watershed in which the project is to be located and must be signed by the

presiding officers of each of those political subdivisions.

(d) The board shall not consider any application for which a memorandum of understanding must be filed under this section until that memorandum of understanding is filed with the executive administrator.

(e) The board shall adopt rules for carrying out this section.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.039, eff. Sept. 1, 1985; Acts 2003, 78th Leg., ch. 1057, Sec. 2, eff. June 20, 2003.

Sec. 15.006. OPEN MEETINGS AND OPEN RECORDS LAWS. Nonprofit water supply corporations which receive any assistance under this chapter are subject to Chapter 551, Government Code, and to Chapter 552, Government Code.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.18. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(78), (90), eff. Sept. 1, 1995.

Sec. 15.007. CONSIDERATIONS FOR CERTAIN FINANCIAL ASSISTANCE. (a) If financial assistance is provided under Subchapter C or J of this chapter, any waste treatment facility to be financed under the application must consider cost-effective methods of treatment such as rock reed, root zone, ponding, irrigation, or other nonconventional methods that may have been developed by the National Aeronautics and Space Administration or the Tennessee Valley Authority.

(b) Before granting an application for financial assistance under Subchapter C or J of this chapter, the board must find that any waste treatment facility to be financed under the application will consider cost-effective innovative methods of treatment such as rock reed, root zone, ponding, irrigation, or other nonconventional methods that may have been developed by the National Aeronautics and Space Administration or the Tennessee Valley Authority.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.03, eff. Sept. 1, 1989.

Sec. 15.008. GRANT STANDARDS. The law regarding uniform grants and contract management, Chapter 783, Government Code, does not apply to a contract under Subchapter F, H, K, or P, or to a contract relating to an economically distressed area or nonborder colonia under Subchapter C.

Added by Acts 1991, 72nd Leg., ch. 422, Sec. 4, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 13, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1367, Sec. 11.02, eff. Sept. 1, 2001.

SUBCHAPTER B. WATER ASSISTANCE FUND

Sec. 15.011. WATER ASSISTANCE FUND. (a) The water assistance fund is created and shall be administered by the board under this chapter and rules adopted by the board.

(b) After notice and hearing and subject to any limitations established by the General Appropriations Act, the board may transfer money from the fund to the loan fund created under Subchapter C, the storage acquisition fund created under Subchapter E, the research and planning fund created under Subchapter F, the hydrographic survey account created under Subchapter M, provided the hydrographic survey account transfer does not exceed $425,000, the aquatic vegetation management fund created under Subchapter N, the rural community water and wastewater loan fund created under Subchapter O, the colonia self-help account created under Subchapter P, and the rural water assistance fund created under Subchapter R.

(c) The board may transfer money in the fund to the water bank account to be used by the board for administration and operation of the Texas Water Bank.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1990, 71st Leg., 5th C.S., ch. 3, Sec. 2, eff. June 14, 1990; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.060, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 4, Sec. 10.07, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 477, Sec. 2, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 647, Sec. 3, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1461, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 4.06, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1234, Sec. 14, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 18.002, eff. Sept. 1,

2003.

Sec. 15.012. MANAGEMENT OF FUND. (a) The board may invest, reinvest, and direct the investment of money accumulated in the fund.

(b) Money appropriated by the legislature to the fund shall be deposited in this fund. Gifts or grants from the United States government, local or regional governments, private sources, or other sources may be deposited in this fund.

(c) Money appropriated to the fund by the legislature for a specific purpose stated in Subchapter C, E, F, M, N, O, or P of this chapter shall be placed in the appropriate fund or account created by that subchapter.

(d) The money held in the fund may be invested as provided by law for investment of money under Section 404.024, Government Code.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1990, 71st Leg., 5th C.S., ch. 3, Sec. 3, eff. June 14, 1990; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.061, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 4, Sec. 10.08, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 477, Sec. 3, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 844, Sec. 3, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1461, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1234, Sec. 15, eff. Sept. 1, 2001.

SUBCHAPTER C. WATER LOAN ASSISTANCE PROGRAM

Sec. 15.101. WATER LOAN ASSISTANCE FUND. (a) The water loan assistance fund is created, to be funded by direct appropriation and by the board at its discretion from the fund.

(b) Repayments of loans shall be deposited in the water assistance fund.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 2.04.

Sec. 15.102. FINANCIAL ASSISTANCE. (a) The loan fund may be used by the board to provide loans of financial assistance to political subdivisions, federal agencies, or both political

subdivisions and federal agencies acting jointly for the construction, acquisition, improvement, or enlargement of projects involving water conservation, water development, or water quality enhancement, providing nonstructural and structural flood control, or drainage, project recreation lands and revenue-generating recreational improvements within any watershed, or providing recharge, chloride control, subsidence control, brush control, weather modification, regionalization, or desalination as provided by legislative appropriations, this chapter, and the board rules.

(b) The loan fund may also be used by the board to provide:

(1) grants or loans for projects that include supplying water and wastewater services in economically distressed areas or nonborder colonias as provided by legislative appropriations, this chapter, and board rules, including projects involving retail distribution of those services; and

(2) grants for:

(A) projects for which federal grant funds are placed in the loan fund;

(B) projects, on specific legislative appropriation for those projects; or

(C) water conservation, desalination, brush control, weather modification, regionalization, and projects providing regional water quality enhancement services as defined by board rule, including regional conveyance systems.

(c) A political subdivision may enter into an agreement with a federal agency to submit a joint application for financial assistance under this subchapter. Before the board may grant financial assistance under a joint application, the board must find that the project is designed to produce effluent that will meet federal and state approved water quality standards.

(d) A grant or loan of financial assistance under a joint application by the federal government and a political subdivision may be made only for a project that is covered by an international contract or treaty to which the United States government is a party, and a grant or loan made under such a joint application is subject to the provisions, terms, and conditions of the international contract or treaty to which the United States government is a party.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 2.04;

Acts 1987, 70th Leg., ch. 977, Sec. 9, eff. June 19, 1987; Acts 1987, 70th Leg., ch. 1103, Sec. 2, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.04, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 966, Sec. 4.07, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1234, Sec. 16, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1367, Sec. 11.03, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 18.003, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 7, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.10, eff. September 1, 2007.

Sec. 15.103. APPLICATION FOR ASSISTANCE.

(a) In an application to the board for financial assistance from the loan fund, the applicant shall include:

(1) the name of each political subdivision or federal agency and its principal officers;

(2) a citation of the law under which each political subdivision or federal agency operates and was created;

(3) the total cost of the project;

(4) the amount of state financial assistance requested;

(5) the plan for repaying the total cost of the project;

(6) the water conservation plan required by Section 16.4021; and

(7) any other information the board requires in order to perform its duties and to protect the public interest.

(b) The board may not accept an application for a loan or grant of financial assistance from the loan fund unless it is submitted in affidavit form by the officials of the political subdivision or the chief administrator of the federal agency or both these officers and the chief administrator under a joint application. The board shall prescribe the affidavit form in its rules.

(c) The rules shall not restrict or prohibit the board from requiring additional factual material from an applicant.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(1), eff. September 1, 2019.

(e) If the applicant claims an exemption under Section

16.4021(d), the applicant shall state the exemption in the application and provide information relating to the exemption as required by board rules.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 1.05, 2.04; Acts 1987, 70th Leg., ch. 977, Sec. 9, eff. June 19, 1987; Acts 1987, 70th Leg., ch. 1103, Sec. 3, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.05, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(1), eff. September 1, 2019.

Sec. 15.104. FINDINGS REGARDING PERMITS. (a) The board shall not release funds for the construction of that portion of a project that proposes surface water or groundwater development until the executive administrator makes a written finding:

(1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water that the project will provide; or

(2) that an applicant proposing groundwater development has the right to use water that the project will provide.

(b) The board may release funds for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs before making the finding required under Subsection (a) if the executive administrator determines that a reasonable expectation exists that the finding will be made before the release of funds for construction.

(c) If an applicant includes a proposal for a waste water treatment plant, the board may not deliver funds for the waste water treatment plant until the applicant has received a permit for construction and operation of the waste water treatment plant and approval of the plans and specifications from the commission. If the applicant proposes a waste water treatment plant that is located outside of the jurisdiction of this state and that is not subject to the permitting authority of the commission, the board must review the plans and specifications in coordination with the commission and find

that the waste water treatment plant is capable of producing effluent that will meet federal and state-approved water quality standards.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 2.04; Acts 1985, 69th Leg., ch. 795, Sec. 1.040, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 246, Sec. 1, eff. Aug. 31, 1987; Acts 1987, 70th Leg., ch. 1103, Sec. 4, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.06, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 1234, Sec. 17, eff. Sept. 1, 2001.

Sec. 15.105. CONSIDERATIONS IN PASSING ON APPLICATION. (a) In passing on an application for financial assistance from the loan fund, the board shall consider but is not limited to:

(1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;

(2) the availability of revenue to the applicant from all sources for the ultimate repayment of the cost of the project, including all interest;

(3) the relationship of the project to overall statewide needs;

(4) the ability of the applicant to finance the project without state assistance;

(5) for applications for grants or loans for economically distressed areas or nonborder colonias, the regulatory efforts by the county in which the project is located to control the construction of subdivisions that lack basic utility services; and

(6) for applications for grants under Section 15.102(b)(2), the ability of the applicant to construct the project without the grant and the benefits of the project to water and wastewater needs of the state.

(b) The board by rule shall further define eligibility for grants under this subchapter.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 2.04; Acts 1987, 70th Leg., ch. 1103, Sec. 5, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.07, eff. Sept. 1, 1989; Acts 2001,

77th Leg., ch. 966, Sec. 4.08, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1367, Sec. 11.04, eff. Sept. 1, 2001.

Sec. 15.106. APPROVAL OF APPLICATION. (a) The board, by resolution, may approve an application for financial assistance if after considering the factors listed in Section 15.105 of this code and any other relevant factors, the board finds:

(1) that the public interest requires state participation in the project; and

(2) that in its opinion the revenue or taxes pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(2), eff. September 1, 2019.

(b-1) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(2), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(2), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(2), eff. September 1, 2019.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(2), eff. September 1, 2019.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(2), eff. September 1, 2019.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 1.07; Acts 1987, 70th Leg., ch. 977, Sec. 10, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.08, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 966, Sec. 4.09, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 688, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(2), eff. September 1, 2019.

Sec. 15.107. METHOD OF MAKING FINANCIAL ASSISTANCE AVAILABLE. (a) The board may make financial assistance available to successful applicants in any manner that it considers economically feasible

including:

(1) contracts or agreements with a political subdivision for the payment of the principal of or interest on or both the principal of and interest on bonds or other obligations issued or to be issued by the political subdivision;

(2) contracts or agreements with a political subdivision for the purpose of providing the political subdivision's share of any cost-sharing required as a participant in or local sponsor of any federal project;

(3) purchase of the bonds or other obligations of a political subdivision for the purpose of completely or partially financing the project for which the application is being submitted; or

(4) contracts or agreements for the receipt of funds and performance of obligations in relation to any grant of funds provided by the board.

(b) Contracts or agreements entered into under Subdivision (1) of Subsection (a) of this section may cover all or any part of the debt service requirements in a given year and may cover debt service requirements in as many years of an issue as the board considers appropriate.

(c) In a determination on a loan for financial assistance, the board may approve interest deferral or the capitalization of interest costs and may approve periods of repayment for the loans of up to 50 years.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 2.04; Acts 1987, 70th Leg., ch. 1103, Sec. 6, eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 966, Sec. 4.10, eff. Sept. 1, 2001.

Sec. 15.1071. SALE OF POLITICAL SUBDIVISION BONDS TO TEXAS WATER RESOURCES FINANCE AUTHORITY. (a) Notwithstanding any other provision of this chapter, the board may sell to the Texas Water Resources Finance Authority any political subdivision bonds purchased with money in the water loan assistance fund and may apply the proceeds of a sale in the manner provided by this section.

(b) The board shall sell the political subdivision bonds at the price and under the terms that it determines to be reasonable.

(c) The board may sell political subdivision bonds to the Texas Water Resources Finance Authority without making a previous offer to the political subdivisions and without advertising, soliciting, or receiving bids for the sale.

(d) The board may enter into a contract with the Texas Water Resources Finance Authority to sell to the authority political subdivision bonds that are not owned by the board. For bonds sold under this subsection, the contract may provide that the board will receive from the authority the sales price for the political subdivision bonds in exchange for the board's agreement to transfer to the authority political subdivision bonds subsequently acquired by the board and to pay to the authority from the investment income received on the water assistance fund or the water loan assistance fund any amounts considered appropriate including without limitation an amount equal to the proportionate share of that investment income attributable to the money used to purchase the political subdivision bonds.

(e) Proceeds from the sale of bonds under this section shall be deposited in the water assistance fund and used for the purposes and in the manner provided by law.

(f) As part of a sales agreement with the Texas Water Resources Finance Authority, the board by contract may agree to perform the functions required to ensure that the political subdivisions pay the debt service on political subdivision bonds sold and observe the conditions and requirements stated in those bonds.

(g) The board may exercise any powers necessary to carry out the authority granted by this section including the authority to contract with any person to accomplish the purposes of this section.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 3, eff. June 20, 1987.

Sec. 15.108. RECOMMENDATIONS FOR FUNDING BY LEGISLATURE. (a) If money is not available in the fund to provide money for projects approved under this subchapter, the board shall prepare and submit with its biennial budget request to the Legislative Budget Board and to the presiding officers of each house of the legislature a list of all projects approved by the board under this subchapter.

(b) The list of projects submitted to the Legislative Budget Board and to the presiding officers of each house of the legislature

shall include relevant information relating to each project and recommendations relating to the terms under which loans of financial assistance should be made to each applicant and projected amounts of money that will be required each biennium to fund each project to its completion.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.04.

Sec. 15.109. DELIVERY OF LOANS OF FINANCIAL ASSISTANCE. (a) As money becomes available in the loan fund, the board shall deliver the funds under the approved applications.

(b) The board shall deliver money in the fund that is provided by legislative appropriation in the manner provided by and subject to the restrictions of the legislative appropriation.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.04.

Sec. 15.110. REQUIREMENTS FOR POLITICAL SUBDIVISIONS AND FEDERAL AGENCIES. (a) Subject only to constitutional limitations, all contracting political subdivisions may issue and execute those bonds, notes, or other obligations necessary to conform to and comply with repayment obligations adopted by the board.

(b) Loans of financial assistance under this subchapter shall be repaid to the board, and the payments made to the board for these loans of financial assistance shall be made in compliance with terms and conditions established by the board.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 2.04; Acts 1989, 71st Leg., ch. 624, Sec. 2.09, 2.10, eff. Sept. 1, 1989.

Sec. 15.111. APPROVAL AND REGISTRATION. The board shall not contract for the payment of the principal of or interest on or both the principal of and interest on any bonds or other obligations that have not been approved by the attorney general and registered by the comptroller.

Formerly Sec. 15.108, added by Acts 1981, 67th Leg., 1st C.S., p.

102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Renumbered by Acts 1985, 69th Leg., ch. 133, Sec. 2.04.

Sec. 15.112. CONTRACTS INCONTESTABLE. Contracts entered into by the board for the payment of the principal of or interest on or both the principal of and interest on bonds or other obligations issued by a political subdivision are valid, binding, and incontestable after:

(1) approval of the bonds or other obligations by the attorney general;

(2) registration of the bonds or other obligations by the comptroller; and

(3) purchase by and delivery of the bonds or other obligations to the purchaser.

Formerly Sec. 15.109, added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Renumbered by Acts 1985, 69th Leg., ch. 133, Sec. 2.04.

Sec. 15.113. INSPECTION OF PROJECTS. (a) The board may inspect the construction of a project any time to assure that:

(1) the contractor is substantially complying with the approved engineering plans of the project; and

(2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the board does not subject the state to any civil liability.

Formerly Sec. 15.110, added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.040, eff. Sept. 1, 1985. Renumbered by Acts 1985, 69th Leg., ch. 133, Sec. 2.04. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 11, eff. June 19, 1987.

Sec. 15.114. ALTERATION OF PLANS. After approval of engineering plans, a political subdivision or federal agency shall not make any substantial or material alteration in the plans unless the executive administrator authorizes the alteration. For a waste

water treatment plant or other facility required to have commission approval of plans and specifications, the commission must give its approval before a substantial or material alteration is made in those plans.

Formerly Sec. 15.111, added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.040, eff. Sept. 1, 1985. Renumbered by Acts 1985, 69th Leg., ch. 133, Sec. 2.04. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 12, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.11, eff. Sept. 1, 1989.

Sec. 15.115. CERTIFICATE OF APPROVAL. The executive administrator may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the project according to the approved plans;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any terms of the contract.

Formerly Sec. 15.112, added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.040, eff. Sept. 1, 1985. Renumbered by Acts 1985, 69th Leg., ch. 133, Sec. 2.04. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 12, eff. June 19, 1987.

Sec. 15.116. SALE OF BONDS BY THE BOARD. The board may sell or dispose of bonds or other obligations purchased with money in the water loan assistance fund.

Added by Acts 1987, 70th Leg., ch. 1103, Sec. 7, eff. Sept. 1, 1987.

SUBCHAPTER D. WATER BOND INSURANCE PROGRAM

Sec. 15.201. DEFINITIONS. (a) In this subchapter:

(1) "Program" means the water bond insurance program.

(2) "Bonds" means bonds or other obligations of a political subdivision or water supply corporation issued to provide funds for a

project defined in Subsection (b) of this section.

(3) "Insured bonds" means bonds or other obligations insured by the state under this subchapter.

(4) "Issuer" means a political subdivision or water supply corporation issuing bonds or other obligations eligible to be insured under the program.

(5) "Water supply corporation" means a nonprofit water supply corporation created and operating under Chapter 67.

(b) Notwithstanding the definition in Subdivision (6), Section 15.001, of this code, in this subchapter, "project" means any undertaking or work to conserve, convey, and develop surface or subsurface water resources of the state, to provide for the maintenance and enhancement of the quality of the water of the state, to provide for flood control and drainage, to provide recharge or chloride control, or to provide for desalinization, and to carry out other purposes defined by board rules.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05. Amended by Acts 1991, 72nd Leg., ch. 516, Sec. 2, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 62, Sec. 18.55, eff. Sept. 1, 1999.

Sec. 15.202. CREATION AND ADMINISTRATION OF PROGRAM. (a) The water bond insurance program is created pursuant to Article III, Section 49-d-4, of the Texas Constitution to insure to holders of insured bonds that in the event of default or impending default the state will pay, to the extent authorized by this subchapter, the principal of or interest on or both principal of and interest on the bonds.

(b) The board shall administer the program in the manner provided by this subchapter and by rules of the board.

(c) The legislature, in accordance with authorization provided by Article III, Section 49-d-4, of the Texas Constitution, authorizes the existence of the program to continue beyond the expiration date of the program provided by Subsection (g) of that section.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05. Amended by Acts 1991, 72nd Leg., ch. 52, Sec. 2, eff. May 1, 1991.

Sec. 15.203. ELIGIBLE BONDS. (a) Only revenue, general

obligation, tax, or combination bonds issued by a political subdivision or a water supply corporation for a project qualifying for assistance under this subchapter and board rules are eligible to be insured under the program.

(b) Bonds issued for a term longer than 50 years are not eligible to be insured under the program.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05.

Sec. 15.204. RULES. The board shall adopt necessary rules to carry out this subchapter.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05.

Sec. 15.205. INSURANCE. The board may pledge the general credit of the state, to the extent authorized by Article III, Section 49-d-4, of the Texas Constitution, to insure the payment of the principal of or interest on or both the principal of and interest on eligible bonds issued by an issuer in the event of default or impending default of the insured bonds.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05.

Sec. 15.206. APPLICATION FOR INSURANCE. (a) An issuer may apply in writing to the board for the insurance of its bonds.

(b) The application must include the following information:

(1) the name of the issuer;

(2) citations of the laws under which the issuer is created and operates and under which the bonds to be insured are to be issued;

(3) the total amount of bonds for which insurance coverage is sought and the anticipated interest rate on the bonds;

(4) the term for which the bonds are to be issued;

(5) the purpose or purposes for which the bonds are to be issued;

(6) financial information relating to the issuance of the bonds and to the financial stability and future of the issuer;

(7) the water conservation plan required by Section

16.4021; and

(8) any other information the board requires by its rules or otherwise considers necessary in making a determination of the application.

(c) The board by rule shall prescribe the form and procedure for submitting and processing an application.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 2, eff. September 1, 2019.

Sec. 15.207. CONSIDERATIONS IN PASSING ON APPLICATION. In addition to criteria established in its rules, the board in passing on an application shall consider:

(1) the purpose or purposes for which the issuer is issuing the bonds;

(2) the financial ability of the issuer to meet its obligations under the bonds;

(3) the risk to the State of Texas in insuring the bonds and the ability of the state to pay the insurance coverage; and

(4) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring similar state assistance and the benefits of those projects to other areas.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05.

Sec. 15.208. APPROVAL OF APPLICATION. (a) After notice and hearing, the board by resolution may approve an application if, after considering the information in the application and presented at the hearing, criteria established by this subchapter, and the rules and other relevant factors, the board finds:

(1) that the bonds are being issued to finance a project that serves the public interest;

(2) that there is strong evidence and a high degree of certainty that the issuer will be able to meet its obligations under the bonds; and

(3) that an applicant proposing surface water development

has the necessary water right authorizing it to appropriate and use the water which the project will provide.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(3), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(3), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(3), eff. September 1, 2019.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(3), eff. September 1, 2019.

Sec. 15.209. CONTRACTS, AGREEMENTS, AND OTHER DOCUMENTS. (a) On approval of an application, the board shall enter into a contract with the issuer for the insurance of the bonds on terms and conditions agreed to by the parties. The terms and conditions must comply with this subchapter and rules adopted by the board.

(b) The insurance contract shall include:

(1) the extent of the insurance coverage;

(2) the terms and conditions of the insurance coverage;

(3) rights in addition to those provided by law reserved by the board against the issuer in the event the board must pay all or part of the insurance coverage; and

(4) any other provision required in order to be in compliance with the board's rules.

(c) The board shall execute any other documents necessary to legally bind the state to insure payment to the bondholders on default or impending default.

(d) For the insurance coverage of bonds to be effective, it must be approved by the attorney general as to the legality of the insurance coverage. Documents relating to the insurance of the bonds shall be submitted to the attorney general for approval at the same time as the bonds and records relating to the issuance of the bonds are submitted for approval. The bonds issued by a political subdivision or water supply corporation and the insurance coverage approved by the board are valid, binding, and incontestable after:

(1) approval by the attorney general;

(2) registration by the comptroller; and
(3) payment by and delivery to the buyer.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05.

Sec. 15.210. LIMITATION ON INSURANCE COVERAGE. (a) Except as provided by Subsection (c) of this section, the total principal balance of all insurance coverage issued by the board and outstanding may not exceed the dollar amount that equals two times the maximum amount of money that the state is authorized to pay under the program by the constitution.

(b) The board may not approve insurance coverage in any state fiscal year that exceeds a total of $100 million for all applicants.

(c) The legislature, by a two-thirds vote of each house, may change the limitations provided by Subsections (a) and (b) of this section.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05.

Sec. 15.211. INSURANCE FEES. (a) The board shall adopt a schedule of fees to be charged an issuer for insurance coverage provided under this subchapter.

(b) Fees charged by the board under this section shall be calculated to provide a reasonable reserve against defaults and impending defaults.

(c) Fees collected under this section shall be deposited in a special reserve fund created in the state treasury for the purpose of paying amounts on default or impending default of any bonds without resorting to the general credit of the state. The board may invest any money credited to the reserve fund in investments authorized by law for state deposits.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05. Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 8, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 308, Sec. 1, eff. June 14, 1989.

Sec. 15.212. PAYMENT BY STATE. (a) On receipt by the executive administrator from the paying agent for any insured bond of

a written notice by registered or certified mail that a payment on the bond is due but has not been made to the paying agent by the issuer and that the issuer's reserves are insufficient to cover the payment, the executive administrator shall have a deposit of funds made with the paying agent sufficient to cover the payment due on the bond less any amount already held by the paying agent to pay the principal of and interest on the bond.

(b) On transfer of the payment to the paying agent under Subsection (a) of this section and on receipt of the uncanceled bond or coupon, the state becomes the owner of the bond or coupon and is subrogated to the rights of the bondholder with respect to the amount paid by the state.

(c) After making payment on the bonds under Subsection (a) of this section, the board shall attempt to collect from the issuer the amount paid by the state. The board may enter into agreements for the issuer to pay those claims, may enforce any provisions of the bonds relating to actions that may be taken by bondholders on default, or may sue the issuer to collect amounts paid by the state. The attorney general, at the request of the board, shall take all necessary legal action to assist the board in carrying out this subsection.

(d) Money collected under Subsection (c) of this section shall be deposited in the special reserve fund up to the amount used from that fund to pay the defaulted bonds. Any remaining money collected and not deposited in that fund shall be deposited in the general revenue fund.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 13, eff. June 19, 1987.

Sec. 15.213. REFUNDING BONDS. Without the express written consent of the board, insurance provided by the board under this subchapter shall not extend to refunding bonds issued to replace bonds that have been insured by the board. The board may give its consent under procedures provided by its rules.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05.

Sec. 15.214. INSPECTION OF PROJECTS. (a) The board may

inspect at any time the construction of a project being constructed with proceeds of revenue bonds insured by the board to assure that:

(1) the contractor is substantially complying with the approved engineering plans of the project; and

(2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the board does not subject the state to any civil liability.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 14, eff. June 19, 1987.

Sec. 15.215. ALTERATION OF PLANS. After approval of engineering plans, a political subdivision or water supply corporation may not make any substantial or material alteration in the plans unless the executive administrator authorizes the alteration.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 14, eff. June 19, 1987.

Sec. 15.216. CERTIFICATE OF APPROVAL. The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the project according to approved plans;

(2) failure to construct the project in accordance with sound engineering principles; or

(3) failure to comply with any terms of the contract.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 14, eff. June 19, 1987.

Sec. 15.217. OPEN RECORDS AND OPEN MEETINGS LAWS. Water supply corporations receiving any assistance under this Act are subject to Chapter 552, Government Code, and Chapter 551, Government Code.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05. Amended by Acts

1995, 74th Leg., ch. 76, Sec. 5.95(78), (90), eff. Sept. 1, 1995.

Sec. 15.218. REPORT. (a) Not later than January 1 of each odd-numbered year, the board shall prepare and submit to the governor, lieutenant governor, and speaker of the house a report relating to the financial impact of the bond insurance program during the immediately preceding biennium.

(b) The report shall include:

(1) the total amount of insurance coverage authorized by the board during the biennium;

(2) the number of insurance coverage authorizations granted by the board;

(3) a list of the issuers receiving insurance coverage from the board during the biennium and the amount of insurance coverage provided to each issuer;

(4) an analysis of the marketability of the bonds of the issuers receiving insurance coverage during the biennium and the effect that the insurance coverage had on interest rates and bond ratings for those issuers;

(5) an analysis of the marketability of bonds issued by the state and its agencies during the biennium and the effect that the bond insurance program had on interest rates on state bonds and the state's bond rating;

(6) an analysis of the impact on the commercial bond market and bond interest rates generally during the biennium as a result of the implementation of the bond insurance program with particular emphasis on the impact on bonds of political subdivisions and water supply corporations that did not participate in the program;

(7) recommendations for changes in the bond issuance program that will favorably affect marketability of state bonds and issuer's bonds, bond ratings, and interest rates; and

(8) any other information, analyses, and recommendations that the board considers necessary to give the governor and the legislature a complete understanding of the financial impact of the bond insurance program.

(c) The state comptroller on request shall provide to the board all information and assistance necessary for the board to prepare this report.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.05. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 14, eff. June 19, 1987; Acts 1997, 75th Leg., ch. 1423, Sec. 20.02, eff. Sept. 1, 1997.

SUBCHAPTER E. STORAGE ACQUISITION PROGRAM

Sec. 15.301. FUND CREATED. There is created a fund in the state treasury to be known as the storage acquisition fund which is to be funded by direct appropriations and by transfers from the fund at the discretion of the board.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 2.06.

Sec. 15.302. AUTHORIZED PROJECTS. (a) The board may use the storage acquisition fund for projects including the design, acquisition, lease, construction, reconstruction, development, or enlargement in whole or part of any existing or proposed water storage project.

(b) In addition, the board may, at its discretion and in accordance with its rules, contract with a political subdivision, under terms and conditions established by the board, to pay the principal of or interest on or both the principal of and interest on bonds or other obligations issued or to be issued by a political subdivision.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.303. JOINT VENTURES. The board may act singly or in a joint venture in partnership with any political subdivision, with the United States, or with any other state to the extent permitted by law.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.304. PERMITS REQUIRED. Except as provided by Section

15.3041 of this code, the board shall obtain permits from the commission for the storage, transportation, and application to beneficial use of water in reservoirs and associated works constructed by the board.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 4.03.

Sec. 15.3041. RESERVATION AND APPROPRIATION FOR BAYS AND ESTUARIES AND INSTREAM USES. (a) Five percent of the annual firm yield of water in any reservoir and associated works constructed with state financial participation under this chapter within 200 river miles from the coast, to commence from the mouth of the river thence inland, is appropriated to the Parks and Wildlife Department for use to make releases to bays and estuaries and for instream uses, and the commission shall issue permits for this water to the Parks and Wildlife Department under procedures adopted by the commission.

(b) The Parks and Wildlife Department in cooperation with the department shall manage this water for the purposes stated in this section.

(c) The Parks and Wildlife Department shall adopt necessary rules and shall enter into necessary memoranda of understanding with the department to provide necessary rules and procedures for managing the water and for release of the water for the purposes stated in this section.

(d) This section does not limit or repeal any other authority of or law relating to the department or the commission.

(e) Operating and maintenance costs for the percentage of annual firm yield appropriated to the Parks and Wildlife Department shall be paid by the local political subdivisions that are the project owners.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 4.03.

Sec. 15.305. STORING WATER. The board may use any reservoir acquired, leased, constructed, reconstructed, developed, or enlarged by it under this chapter to store unappropriated state water and other water acquired by the state.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.306. BOARD FINDINGS. Before the board may acquire storage facilities in any reservoir, the board shall find affirmatively that:

(1) it is reasonable to expect that the state will recover its investment in the facilities;

(2) the cost of the facilities exceeds the current financing capabilities of the area involved, and the facilities cannot be reasonably financed by local interests without state participation;

(3) the public interest will be served by acquisition of the facilities; and

(4) the facilities to be constructed or reconstructed contemplate the optimum development of the site which is reasonably reserved under all existing circumstances of the site.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.3061. RECOMMENDATIONS FOR FUNDING BY LEGISLATURE. (a) If money is not available in the fund to provide money for projects approved under this subchapter, the board shall prepare and submit with its biennial budget request to the Legislative Budget Board and to the presiding officers of each house of the legislature a list of all projects approved by the board under this subchapter.

(b) The list of projects submitted to the Legislative Budget Board and to the presiding officers of each house of the legislature shall include relevant information relating to each project and recommendations relating to the priorities for funding.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.06.

Sec. 15.307. FACILITIES WANTED BY POLITICAL SUBDIVISION. The board shall not acquire any facility to the extent that the board finds that the political subdivision:

(1) is willing and reasonably able to finance the

acquisition of the facility;

(2) has qualified by obtaining the necessary permit; and

(3) has proposals that are inconsistent with the objectives of the state water plan.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 14, eff. June 19, 1987.

Sec. 15.308. CONTRACTS: GENERAL AUTHORITY. (a) The board may execute contracts which include but are not limited to the design, management, acquisition, lease, construction, reconstruction, development, enlargement, operation, or maintenance, singularly or in any combination, of any existing or proposed storage project.

(b) The board shall obtain the approval of the attorney general as to the legality of all contracts authorized under this subchapter to which the board is a party.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.309. SPECIFIC CONTRACTS AUTHORIZED. Contracts authorized by Section 15.308 of this code include but are not limited to the following:

(1) federal grants or grants from other sources;

(2) contracts which may be fully or partially secured by water purchase or repayment contracts executed by political subdivisions of the state for purchase of water and facilities necessary to supply present and future regional and local water requirements;

(3) contracts for goods and services necessary for the design, management, acquisition, lease, construction, reconstruction, development, enlargement, implementation, operation, or maintenance of any existing or proposed project or portion of the project; and

(4) contracts secured by the pledge of all or any part of funds in the storage acquisition fund.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.310. CONTRACTS: FACILITIES ACQUIRED FOR A TERM OF YEARS. If facilities are acquired for a term of years, the board may include in the contract provisions for renewal that will protect the state's investment.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.311. MAINTENANCE CONTRACTS. The board may execute contracts for the operation and maintenance of the state's interest in any project and may agree to pay reasonable operation and maintenance charges allocable to the state interest.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.312. RECREATIONAL FACILITIES. The board may execute contracts with the United States and with state agencies and political subdivisions and with others to the extent authorized for the development and operation of recreational facilities at any project in which the state has acquired an interest. Income received by the board under these contracts shall be deposited in the water assistance fund.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.313. BOARD MAY SELL OR LEASE PROJECTS. (a) The board may sell, transfer, or lease, to the extent of its ownership, a project acquired, constructed, reconstructed, developed, or enlarged with money from the storage acquisition fund.

(b) The board shall obtain the approval of the attorney general as to the legality of all contracts authorized under this subchapter to which the board is a party.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff.

Nov. 10, 1981.

Sec. 15.314. PERMIT REQUIRED. Before the board grants the application to buy, receive, or lease the facilities, the applicant shall first secure a permit for water use from the commission. If the facilities are to be leased, the permit may be for a term of years.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.315. CONTRACT MUST BE NEGOTIATED. The commission may issue a term permit until the applicant has executed a contract with the board for acquisition of the facilities.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.316. RESERVOIR LAND. The board may lease acquired reservoir land until construction of the dam is completed without the necessity of a permit issued by the commission.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.317. PRICE OF SALE. (a) The price of the sale or transfer of a state facility acquired on or subsequent to September 1, 1981, other than a facility acquired under a contract with the United States, shall be the sum of the direct cost of acquisition, plus an amount of interest calculated by multiplying the lending rate in effect at the date of acquisition by the amount of board money disbursed for the acquisition times the number of years and fraction of a year from the date or dates of the disbursement of funds to the date or dates of the sale or transfer of the state facility, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of sale or transfer, less any payments received by the board from the lease of the facility or the sale of

water from it.

(b) The purchaser of the board's interest in a state facility shall also assume, to the extent disclosed by the board at or before the sale, any and all direct, conditional, or contingent liabilities of the board attributed to the project in direct relation to the percentage of the project acquired by the purchaser.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.318. PRICE OF SALE: FACILITIES ACQUIRED UNDER CONTRACTS WITH THE UNITED STATES. (a) The price of the sale or transfer of a state facility acquired on or subsequent to September 1, 1981, under a contract with the United States shall be the sum of the direct cost of acquisition, plus an amount of interest calculated by multiplying the lending rate in effect at the time of acquisition, by the amount of board money disbursed for the acquisition of the facility times the number of years and fraction of a year from the date or dates of disbursement of the money to the date or dates of sale or transfer, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer of the facility, less any payments received by the board from the lease of the facility or the sale of water from it.

(b) If, in transferring any contract, the board remains in any way directly, conditionally, or contingently liable for the performance of any part of the contract, then the transferee, in addition to the payments prescribed by Subsection (a) of this section, as applicable, shall pay to the board annually one-half of one percent of the remaining amount owed to the other party to the contract, and shall continue these payments until the board is fully released from the contract.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.319. COSTS DEFINED. With reference to the sale of a state facility, "direct cost of acquisition" means the principal amount the board has paid plus the amounts the board has agreed to pay under obligations not transferred to the purchaser for a facility

up to the date of sale, but does not include the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer of the facility.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.320. LEASE PAYMENTS. In leasing a state facility for a term of years, the board shall require annual payments not less than the total of:

(1) the annual principal and interest requirements applicable to the debt incurred by the state in acquiring the facility; and

(2) the state's annual cost for operation, maintenance, and rehabilitation of the facility.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.321. SALE OR LEASE: CONDITION PRECEDENT. (a) No sale, transfer, or lease of a state facility is valid unless the board first makes the following affirmative findings:

(1) that the applicant has a permit granted by the commission;

(2) that the sale, transfer, or lease serves the public interest; and

(3) that the consideration for the sale, transfer, or lease is fair, just, reasonable, and in full compliance with the law.

(b) The consideration for a sale or transfer may be either money or revenue bonds which for the purposes of this section shall be deemed the same as money.

(c) The amount of money shall be equal to the price for purchasing the facilities as prescribed by Sections 15.317-15.318 of this code, or if revenue bonds constitute the consideration, the principal amount of revenue bonds shall be equal to the price for purchasing the facilities as prescribed by the provisions of Sections 15.317-15.318 of this code, and the revenue bonds shall bear interest at the rate prescribed in Section 17.128 of this code with regard to bonds purchased with the proceeds of the Texas water development

fund.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.322. DISPOSITION OF PROCEEDS. (a) The money received from any sale, transfer, or lease of facilities, or in the case of a sale or transfer involving revenue bonds, the money received as matured interest or principal on the bonds shall be placed in the general revenue fund.

(b) If money received from a sale, transfer, or lease of facilities, or in the case of a sale or transfer involving revenue bonds, if the money received as matured interest or principal on the bonds, is money derived originally from the appropriation made in Section 2, Chapter 12, Acts of the 67th Legislature, 1st Called Session, 1981, or interest earned on that money, the money received as matured interest or principal on the bonds shall be placed in a special account in the water assistance fund.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 2.06.

Sec. 15.323. SALE OF STORED WATER. (a) The board may sell any unappropriated public water of the state and other water acquired by the state that is stored by or for it. The price shall be determined by the board.

(b) Except as provided by Subsection (c) of this section, money received from any sale shall be placed in the general revenue fund.

(c) Money received from a sale of unappropriated public water or other water acquired by the state and stored by it or for it in a facility for which funds were provided from the appropriation made in Section 2, Chapter 12, Acts of the 67th Legislature, 1st Called Session, 1981, or interest earned on the money constituting that appropriation, must be deposited in a special account in the water assistance fund.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 2.06.

Sec. 15.324. SALE CONTRACT: PROVISIONS, LIMITATIONS. (a) The board may determine the consideration and other provisions to be included in water sale contracts, but the consideration and other provisions shall be fair, reasonable, and nondiscriminatory. The board may include charges for standby service, which means holding water and conservation storage space for use and for actual delivery of water.

(b) The board shall make the same determinations with respect to the sale of water as are required by Section 15.321 of this code with respect to the sale or lease of facilities.

(c) The board shall not compete with any political subdivisions in the sale of water when this competition jeopardizes the ability of the political subdivision to meet obligations incurred to finance its own water supply projects.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.325. EMERGENCY RELEASES OF WATER. (a) All water owned by the board in any facility may be released at the discretion of the board, with or without charge, to relieve any emergency condition arising from drought, public calamity, or any other reason causing a severe water shortage, if the commission first determines the existence of the emergency and requests the board to release water to alleviate the emergency condition.

(b) The executive administrator may authorize the release of water owned by the state from any facility in which the state has an interest under this subchapter for a period of not to exceed 72 hours from time of authorization to relieve an emergency condition that poses an imminent threat of flooding. The commission must approve any release of water that must be made beyond the 72-hour period provided by this subsection.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.041, eff. Sept. 1, 1985.

Sec. 15.326. PREFERENCES. The board shall give political subdivisions a preferential right, but not an exclusive right, to

purchase, acquire, or lease facilities and to purchase water from facilities. Preferences shall be given in these respects in accord with the provisions of Section 11.123 of this code. The board and the commission shall coordinate their efforts to meet these objectives and to assure that the public water of this state, which is held in trust for the use and benefit of the public, will be conserved, developed, and utilized in the greatest practicable measure for the public welfare.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.327. LEASE OF LAND PRIOR TO PROJECT CONSTRUCTION. The board may lease tracts of land acquired for project purposes for a term of years for any purpose not inconsistent with ultimate project construction. The lease shall provide for expiration before initiation of project construction. The money received from such leases shall be placed in the water assistance fund.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.328. LEASE CONTRIBUTION EQUIVALENT TO TAXES. The lease may provide for contribution by the lessee to units of local government of amounts equivalent to ad valorem taxes or special assessments.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.329. INSPECTION OF PROJECTS. (a) The board may inspect the construction of a project any time to assure that:

(1) the contractor is substantially complying with the approved engineering plans of the project; and

(2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the board does not subject the state to any civil liability.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.042, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 14, eff. June 19, 1987.

Sec. 15.330. ALTERATION OF PLANS. After approval of engineering plans, a political subdivision shall not make any substantial or material alteration in the plans unless the executive administrator authorizes the alteration. For a waste water treatment plant or other facility required to have commission approval of the plans and specifications, the commission must give its approval before a substantial or material alteration is made in those plans.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.042, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 14, eff. June 19, 1987.

Sec. 15.331. CERTIFICATE OF APPROVAL. The executive administrator may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the project according to approved plans;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any terms of the contract.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.042, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 14, eff. June 19, 1987.

SUBCHAPTER F. RESEARCH AND PLANNING PROGRAM

Sec. 15.401. PROGRAM CREATION. The research and planning program is created to provide money for research into and planning of the proper conservation, management, and development of the state's water resources, for regional planning by political subdivisions, for facility engineering in economically distressed areas, and for flood

control planning by political subdivisions. The program may also provide money for research and planning by Texas political subdivisions related to the proper conservation, management, and development of water resources of areas outside Texas if such research or planning will result in water being available for use in or for the benefit of Texas or will maintain and enhance the quality of water in Texas.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1991, 72nd Leg., ch. 516, Sec. 3, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 1.04, eff. Sept. 1, 1997.

Sec. 15.402. RESEARCH AND PLANNING FUND. The research and planning fund is created in the state treasury to be funded by direct appropriation and at the discretion of the board from the money in the fund.

Added by Acts 1981, 67th Leg. 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 133, Sec. 2.13.

Sec. 15.403. RULES. The board shall adopt rules to carry out this chapter.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981.

Sec. 15.404. RESEARCH CONTRACTS. (a) The board may enter into a contract with any person for research into any matter relating to the conservation and development of the state's water resources or for research by Texas political subdivisions related to the proper conservation and development of water resources of areas outside Texas if such research will result in water being available for use in or for the benefit of Texas or will help maintain and enhance the quality of water in Texas.

(b) Before a contract is awarded, the board may prepare written specifications for the proposed contract and may require each prospective contractor to prepare and submit to the board a written

proposal that includes:

(1) a description of the proposed research project;

(2) a detailed estimate of the cost of the proposed research project;

(3) the estimated time required to complete the research project; and

(4) any other information requested by the board or required by the board's rules.

(c) At a regular or specially called meeting of the board, the board may award a research contract to any person and may provide money from the research and planning fund in any amount the board considers adequate to carry out the research project under the contract.

(d) The board shall adopt rules providing criteria for research projects and for eligibility of persons to receive contract awards under this section.

(e) A contract made by the board under this section shall include:

(1) a detailed description of the research project;

(2) the time in which the research project is to be completed;

(3) the total amount of money to be paid by the board from the research and planning fund for the research project; and

(4) any other terms and conditions required by the board's rules or agreed to by the contracting parties.

(f) The board may enter into a supplemental contract with a contractor under this section to change any of the provisions of a contract awarded under this section including extension of time to complete the project, the award of more research funds, or changes in the planned research.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 1.05, eff. Sept. 1, 1997.

Sec. 15.405. FLOOD CONTROL PLANNING CONTRACTS. (a) In this section, "flood control planning" means any work related to:

(1) planning for flood protection;

(2) preparing applications for and obtaining regulatory

approvals at the local, state, or federal level;

(3) activities associated with administrative or legal proceedings by regulatory agencies; and

(4) preparing engineering plans and specifications to provide structural or nonstructural flood mitigation and drainage.

(a-1) The board may enter into contracts with political subdivisions to pay from the research and planning fund all or part of the cost of flood control planning for the political subdivision.

(b) A political subdivision that desires money from the research and planning fund for flood control planning shall submit a written application to the board in the manner and form required by board rules.

(c) The application shall include:

(1) the name of the political subdivision;

(2) a citation to the laws under which the political subdivision was created and is operating including specific citation of all laws providing flood control authority;

(3) the amount requested from the board for flood control planning; and

(4) any other information required by the board in its rules or specifically requested by the board.

(d) After notice and hearing, the board may award the applicant all or part of the requested funds that are considered necessary by the board for the political subdivision to carry out adequate flood control planning.

(e) If the board grants an application under this section and awards funds for flood control planning, the board shall enter into a contract with the political subdivision that includes:

(1) a detailed statement of the purpose for which the money is to be used;

(2) the total amount of money to be paid from the research and planning fund under the contract; and

(3) any other terms and conditions required by board rules or agreed to by the contracting parties.

(f) The board shall adopt rules establishing criteria of eligibility for flood control planning money that considers:

(1) the relative need of the political subdivision for the money, giving greater importance to a county that has a median household income that is not greater than 85 percent of the median state household income;

(2) the legal authority of the political subdivision to plan for and control flooding; and

(3) the effect of flood control planning by the political subdivision on overall flood control in the state and within the area in which the political subdivision is located.

(g) The board shall require that flood control planning documents developed under contracts entered into under this section be made available to the commission.

Added by Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 12, Sec. 1, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.043, eff. Sept. 1, 1985.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 1.01, eff. June 13, 2019.

Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 1.02, eff. June 13, 2019.

Sec. 15.406. REGIONAL FACILITY PLANNING. (a) The board may enter into contracts with political subdivisions to pay from the research and planning fund all or part of the cost of developing regional facility plans.

(b) A political subdivision that desires money from the research and planning fund for regional facility planning shall submit a written application to the board in the manner and form required by board rules.

(c) The application shall include:

(1) the name of the political subdivision;

(2) a citation to the laws under which the political subdivision was created and is operating including specific citation of all laws providing authority to plan, develop, and operate regional facilities;

(3) the amount requested from the board for regional facility planning; and

(4) any other information required by the board in its rules or specifically requested by the board.

(d) After notice and hearing, the board may award the applicant all or part of the requested funds that are considered necessary by the board for the political subdivision to carry out adequate

regional facility planning.

(e) If the board grants an application under this section and awards funds for regional facility planning, the board shall enter into a contract with the political subdivision that includes:

(1) a detailed statement of the purpose for which the money is to be used;

(2) the total amount of money to be paid from the research and planning fund under the contract; and

(3) any other terms and conditions required by board rules or agreed to by the contracting parties.

(f) The board shall adopt rules establishing criteria of eligibility for regional facility planning money that considers:

(1) the relative need of the political subdivision for the money;

(2) the legal authority of the political subdivision to plan, develop, and operate regional facilities;

(3) the effect of regional facility planning by the political subdivision on overall regional facility planning, development, and operation in the state and within the area in which the political subdivision is located; and

(4) the degree to which the regional facility planning by the political subdivision is consistent with an approved regional water plan for the area in which the political subdivision is located.

(g) The board may require that regional facility plans developed under contracts entered into under this section be made available to the commission as provided by board rules.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.13. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 15, eff. June 19, 1987; Acts 1997, 75th Leg., ch. 1010, Sec. 1.06, eff. Sept. 1, 1997.

Sec. 15.4061. FUNDING FOR REGIONAL WATER PLANS. (a) The board may enter into contracts with political subdivisions designated as representatives of a regional water planning group under Section 16.053(c) of this code to pay from the research and planning fund all or part of the cost of developing or revising regional water plans as defined in Section 16.053 of this code.

(b) A political subdivision may submit, either individually or

jointly with other political subdivisions, a written application to the board for the purpose of funding regional water planning from the research and planning fund.

(c) The application shall be in the manner and form required by board rules and include:

(1) the name of the political subdivision or political subdivisions;

(2) a citation to the laws under which the political subdivision was created and is operating, including specific citation of all laws providing authority to develop and implement a regional water plan;

(3) the amount requested from the board for regional water planning; and

(4) any other relevant information required by the board in its rules or specifically requested by the board.

(d) After notice and hearing, the board may award the applicant all or part of the requested funds that the board considers necessary for the political subdivision to carry out regional water planning.

(e) If the board grants an application under this section and awards funds for regional water planning, the board shall enter into a contract with the political subdivision or political subdivisions that includes:

(1) a detailed statement of the purpose for which the money is to be used;

(2) the total amount of money to be paid by the board from the research and planning fund under the contract; and

(3) any other terms and conditions required by the board's rules or agreed to by the contracting parties.

(f) The board shall adopt rules establishing criteria for eligibility for regional water planning money that include:

(1) the relative need of the political subdivision for the money;

(2) the legal authority of the political subdivision to develop and implement a regional water plan; and

(3) the degree to which regional water planning by the political subdivision or political subdivisions will address the water supply needs in the regional water planning area.

(g) The board may not provide funds under this section for activities for which existing information or data is sufficient for the planning effort, including:

(1) detailed evaluation of cost of water supply alternatives where recent information is available to evaluate the cost associated with the alternative;

(2) evaluation of groundwater resources for which current information is available from the board or other entity sufficient for evaluation of the resource;

(3) determination of water savings resulting from standard conservation practices for which current information is available from the board;

(4) revision of board demand and population projections;

(5) revision of environmental planning criteria for new surface water supply projects as defined in the state water plan guidelines established in Section 16.051(d) of this section; and

(6) collection of data describing groundwater or surface water resources where information for evaluation of the resource is currently available.

(h) The board shall require that regional water plans developed or revised under contracts entered into under this section be made available to the commission, the Department of Agriculture, and the Parks and Wildlife Department.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 1.07, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 456, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 1, eff. June 18, 1999.

Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. The board may authorize the use of money in the research and planning fund:

(1) to compensate the members of the Texas environmental flows science advisory committee established under Section 11.02361 for attendance and participation at meetings of the committee and for transportation, meals, lodging, or other travel expenses associated with attendance at those meetings as provided by the General Appropriations Act;

(2) for contracts with cooperating state and federal agencies and universities and with private entities as necessary to provide technical assistance to enable the Texas environmental flows science advisory committee and the basin and bay expert science teams established under Section 11.02362 to perform their statutory duties;

(3) to compensate the members of the basin and bay expert

science teams established under Section 11.02362 for attendance and participation at meetings of the basin and bay expert science teams and for transportation, meals, lodging, or other travel expenses associated with attendance at those meetings as provided by the General Appropriations Act; and

(4) for contracts with political subdivisions designated as representatives of basin and bay area stakeholders committees established under Section 11.02362 to fund all or part of the administrative expenses incurred in conducting meetings of the basin and bay area stakeholders committees or the pertinent basin and bay expert science teams.

Added by Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.22, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.22, eff. September 1, 2007.

Sec. 15.407. FACILITY ENGINEERING IN ECONOMICALLY DISTRESSED AREAS. (a) In this section, "economically distressed area" and "political subdivision" have the meanings assigned by Section 17.921.

(b) The board may enter into contracts with a political subdivision to pay from the research and planning fund all or part of the cost of facility engineering in economically distressed areas, including preparation of plans and specifications.

(c) The selection process used by a political subdivision to procure engineering services necessary for facility engineering is subject to review by and approval of the executive administrator. The executive administrator may assist a political subdivision in the selection of the provider of engineering services necessary for facility engineering in economically distressed areas.

(d) The board shall adopt rules governing the procurement of facility engineering services by a political subdivision awarded funds under this subchapter and may adopt other rules necessary to carry out the board's powers and duties under this subchapter.

(e) A political subdivision that desires money from the research and planning fund for facility engineering in an economically distressed area shall submit a written application to the board in the manner and form required by board rules.

(f) The application shall include:

(1) the name of the political subdivision;

(2) a citation to the laws under which the political subdivision was created and is operating;

(3) the amount requested from the board for facility engineering in an economically distressed area; and

(4) any other information required by the board in its rules or specifically requested by the board.

(g) After notice and hearing, the board may award the applicant all or part of the requested funds that are considered necessary by the board for the political subdivision to carry out adequate facility engineering in an economically distressed area.

(h) If the board grants an application under this section and awards funds for facility engineering in an economically distressed area, the board shall enter into a contract with the political subdivision that includes:

(1) a detailed statement of the purpose for which the money is to be used;

(2) the total amount of money to be paid from the research and planning fund under the contract; and

(3) any other terms and conditions required by board rules or agreed to by the contracting parties.

(i) Repealed by Acts 2005, 79th Leg., Ch. 927, Sec. 15, eff. September 1, 2005.

(j) If the board determines that planning activities undertaken by a political subdivision for which the board has committed funds under this subchapter have been inadequate or not completed in a timely manner, the board may terminate the contract with the political subdivision and on behalf of and in consultation with the political subdivision may perform or contract for facility engineering in the economically distressed area.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.12, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 649, Sec. 1, eff. June 14, 1995; Acts 1999, 76th Leg., ch. 404, Sec. 32, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 15, eff. September 1, 2005.

SUBCHAPTER G. STATE WATER IMPLEMENTATION FUND FOR TEXAS

Sec. 15.431. DEFINITIONS. In this subchapter:

(1) "Advisory committee" means the State Water Implementation Fund for Texas Advisory Committee.

(2) "Fund" means the state water implementation fund for Texas.

(3) "Historically underutilized business" has the meaning assigned by Section 2161.001, Government Code.

(4) "Trust company" means the Texas Treasury Safekeeping Trust Company.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.

Sec. 15.432. FUND. (a) The state water implementation fund for Texas is a special fund in the state treasury outside the general revenue fund to be used by the board, without further legislative appropriation, for the purpose of implementing the state water plan as provided by this subchapter. The board may establish separate accounts in the fund. The fund and the fund's accounts are kept and held by the trust company for and in the name of the board. The board has legal title to money and investments in the fund until money is disbursed from the fund as provided by this subchapter and board rules. It is the intent of the legislature that the fund will never be used:

(1) for a purpose other than the support of projects in the state water plan; or

(2) to certify that appropriations from the treasury are within the amount estimated to be available in a fund of the treasury affected by the appropriation.

(b) Money deposited to the credit of the fund may be used only as provided by this subchapter.

(c) The fund consists of:

(1) money transferred or deposited to the credit of the fund by law, including money from any source transferred or deposited to the credit of the fund at the board's discretion as authorized by law;

(2) the proceeds of any fee or tax imposed by this state that by statute is dedicated for deposit to the credit of the fund;

(3) any other revenue that the legislature by statute dedicates for deposit to the credit of the fund;

(4) investment earnings and interest earned on amounts credited to the fund; and

(5) money transferred to the fund under a bond enhancement agreement from another fund or account to which money from the fund was transferred under a bond enhancement agreement, as authorized by Section 15.435.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.

Sec. 15.433. MANAGEMENT AND INVESTMENT OF FUND. (a) The trust company shall hold and invest the fund, and any accounts established in the fund, for and in the name of the board, taking into account the purposes for which money in the fund may be used. The fund may be invested with the state treasury pool.

(b) The overall objective for the investment of the fund is to maintain sufficient liquidity to meet the needs of the fund while striving to preserve the purchasing power of the fund.

(c) The trust company has any power necessary to accomplish the purposes of managing and investing the assets of the fund. In managing the assets of the fund, through procedures and subject to restrictions the trust company considers appropriate, the trust company may acquire, exchange, sell, supervise, manage, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the fund then prevailing, taking into consideration the investment of all the assets of the fund rather than a single investment.

(d) The trust company may charge fees to cover its costs incurred in managing and investing the fund. The fees must be consistent with the fees the trust company charges other state and local governmental entities for which it provides investment management services. The trust company may recover fees it charges under this subsection only from the earnings of the fund.

(e) The trust company annually shall provide a written report

to the board and to the advisory committee with respect to the investment of the fund. The trust company shall contract with a certified public accountant to conduct an independent audit of the fund annually and shall present the results of each annual audit to the board and to the advisory committee. This subsection does not affect the state auditor's authority to conduct an audit of the fund under Chapter 321, Government Code.

(f) The trust company shall adopt a written investment policy that is appropriate for the fund. The trust company shall present the investment policy to the investment advisory board established under Section 404.028, Government Code. The investment advisory board shall submit to the trust company recommendations regarding the policy.

(g) The board annually shall provide to the trust company a forecast of the cash flows into and out of the fund. The board shall provide updates to the forecasts as appropriate to ensure that the trust company is able to achieve the objective specified by Subsection (b).

(h) The trust company shall disburse money from the fund as directed by the board. The board shall direct disbursements from the fund on a semiannual schedule specified by the board and not more frequently than twice in any state fiscal year.

(i) An investment-related contract entered into under this section is not subject to Chapter 2260, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.

Sec. 15.434. USE OF FUND; PAYMENTS TO AND FROM OTHER FUNDS OR ACCOUNTS. (a) At the direction of the board, the trust company shall make disbursements from the fund to another fund or account pursuant to a bond enhancement agreement authorized by Section 15.435 in the amounts the board determines are needed for debt service payments on or security provisions of the board's general obligation bonds or revenue bonds, after considering all other sources available for those purposes in the respective fund or account.

(b) Of the money disbursed from the fund during the five-year period between the adoption of a state water plan and the adoption of a new plan, the board shall undertake to apply not less than:

(1) 10 percent to support projects described by Section 15.435 that are for:

(A) rural political subdivisions as defined by Section 15.992; or

(B) agricultural water conservation; and

(2) 20 percent to support projects described by Section 15.435, including agricultural irrigation projects, that are designed for water conservation or reuse.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.

Sec. 15.435. BOND ENHANCEMENT AGREEMENTS. (a) A bond enhancement agreement entered into under this section is an agreement for professional services. A bond enhancement agreement must contain terms that are consistent with Section 15.433(h), and the agreement, including the period covered by the agreement and all other terms and conditions of the agreement, must be approved by the board. An obligation to disburse money from the fund, or from a special account established by the board, in accordance with a bond enhancement agreement is a special obligation of the board payable solely from designated income and receipts of the fund or of the account, as determined by the board. An obligation to disburse money from the fund, or from a special account established by the board, in accordance with a bond enhancement agreement does not constitute indebtedness of the state.

(b) To facilitate the use of the fund for the purposes of this subchapter, the board may direct the trust company to enter into bond enhancement agreements to provide a source of revenue or security for the payment of the principal of and interest on general obligation bonds, including bonds issued under Section 49-d-9 or 49-d-11, Article III, Texas Constitution, or revenue bonds issued by the board to finance or refinance projects included in the state water plan if the proceeds of the sale of the bonds have been or will be deposited to the credit of:

(1) the state water implementation revenue fund for Texas;

(2) the water infrastructure fund;

(3) the rural water assistance fund;

(4) the Texas Water Development Fund II state participation

account; or

(5) the agricultural water conservation fund.

(c) If the trust company enters into a bond enhancement agreement under Subsection (b), the board may direct the trust company to make disbursements from the fund to another fund or account for the support of bonds the proceeds of which are used to provide financial assistance in the form of:

(1) a loan bearing an interest rate of not less than 50 percent of the then-current market rate of interest available to the board;

(2) a loan to finance a facility under repayment terms similar to the terms of debt customarily issued by the entity requesting assistance but not to exceed the lesser of:

(A) the expected useful life of the facility; or

(B) 30 years;

(3) a deferral of loan repayment, including deferral of the repayment of:

(A) principal and interest; or

(B) accrued interest;

(4) incremental repurchase terms for an acquired facility, including terms for no initial repurchase payment followed by progressively increasing incremental levels of interest payment, repurchase of principal and interest, and ultimate repurchase of the entire state interest in the facility using simple interest calculations; or

(5) a combination of the methods of financing described by Subdivisions (1)-(4).

(d) The board may direct the trust company to enter into bond enhancement agreements with respect to bonds issued by the board before September 1, 2013, only if:

(1) those bonds otherwise satisfy the requirements of Subsections (b) and (c);

(2) the proceeds of those bonds were or are required to be used only for the implementation of water projects recommended through the state and regional water planning processes under Sections 16.051 and 16.053; and

(3) general revenue of the state was appropriated before September 1, 2013, for the payment of debt service on those bonds.

(e) The board may direct the trust company to enter into bond enhancement agreements with respect to refunding bonds issued by the

board to refund bonds issued by the board the proceeds of which have been or are to be used for projects included in the state water plan and which otherwise satisfied the requirements of Subsections (b) and (c).

(f) The board may not direct the trust company to enter into a bond enhancement agreement with respect to bonds issued by the board the proceeds of which have been or are to be used to make grants.

(g) The board may not direct the trust company to enter into a bond enhancement agreement with respect to bonds issued by the board the proceeds of which may be used to provide financial assistance to an applicant if at the time of the request the applicant has failed to:

(1) provide information regarding a water conservation plan in accordance with Section 16.4021; or

(2) satisfactorily complete a request by the executive administrator or a regional water planning group for information relevant to the project for which the financial assistance is sought, including a water infrastructure financing survey under Section 16.053(q).

(h) The board may not direct the trust company to enter into a bond enhancement agreement with respect to bonds issued by the board the proceeds of which may be used to provide financial assistance to an applicant unless at the time of the request the applicant has acknowledged its legal obligation to comply with any applicable requirements of:

(1) federal law relating to contracting with disadvantaged business enterprises; and

(2) state law relating to contracting with historically underutilized businesses.

(i) The board may not approve a bond enhancement agreement with respect to bonds issued by the board unless the agreement contains a provision to the effect that if the trust company makes a disbursement under the bond enhancement agreement from the fund to the credit of another fund or account as provided by Section 15.434(a), the board shall direct the comptroller to transfer an amount not to exceed that amount from the fund or account receiving the payment back to the fund if:

(1) money is available in the surplus balance in the fund or account for that purpose; and

(2) the money transferred back to the fund will not cause

general obligation bonds that are payable from the fund or account receiving the payment to no longer be self-supporting for purposes of Section 49-j(b), Article III, Texas Constitution.

(j) For purposes of Subsection (i)(1), the surplus balance of a fund or account that receives a disbursement from the fund under a bond enhancement agreement is the amount of money on deposit in the fund or account, as determined by the board, that is attributable to the general obligation bonds or revenue bonds that are the subject of the bond enhancement agreement, including money received from the sale or other disposition of the board's rights to receive repayment of financial assistance, money received from the sale, transfer, or lease of an acquired facility, money received from the sale of water associated with an acquired facility, and related investment earnings, that exceeds the amount required to pay annual debt service on the bonds and any other amounts specified in the resolution or other proceedings authorizing the bonds and any related obligations.

(k) The board shall submit each bond enhancement agreement and the record relating to the agreement to the attorney general for examination as to the validity of the agreement. If the attorney general finds that the agreement has been made in accordance with the constitution and other laws of this state, the attorney general shall approve the agreement and the comptroller shall register the agreement. If the agreement is not submitted at the same time that the bonds to which it relates are submitted, the agreement shall be treated as a public security solely for the purposes of Section 1202.004, Government Code.

(l) After a bond enhancement agreement has been approved and registered as provided by Subsection (k), the agreement is valid and is incontestable for any cause.

(m) At the direction of the board, the trust company shall make disbursements from the fund, or from a special account established by the board, in accordance with a bond enhancement agreement in the amounts the board determines are needed for debt service payments on, or for security provisions of, general obligation bonds or revenue bonds issued by the board the proceeds of the sale of which have been deposited in another fund administered by the board, or in an account in that other fund, for use in accordance with this subchapter, after the board considers all other sources available for those purposes in that other fund or account. Money transferred under this subsection may be deposited into that other fund or into a special account

established by the trust company or a corporate trustee that is a trust company or a bank that has the powers of a trust company, as determined by the board.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 3, eff. September 1, 2019.

Sec. 15.436. PRIORITIZATION OF PROJECTS BY REGIONAL WATER PLANNING GROUPS. (a) Each regional water planning group shall prioritize projects in its respective regional water plan for the purposes of Section 15.435. At a minimum, a regional water planning group must consider the following criteria in prioritizing each project:

(1) the decade in which the project will be needed;

(2) the feasibility of the project, including the availability of water rights for purposes of the project and the hydrological and scientific practicability of the project;

(3) the viability of the project, including whether the project is a comprehensive solution with a measurable outcome;

(4) the sustainability of the project, taking into consideration the life of the project; and

(5) the cost-effectiveness of the project, taking into consideration the expected unit cost of the water to be supplied by the project.

(b) In prioritizing projects, each regional water planning group shall include projects that meet long-term needs as well as projects that meet short-term needs.

(c) The board shall create a stakeholders committee composed of the presiding officer or a person designated by the presiding officer of each regional water planning group to establish uniform standards to be used by the regional water planning groups in prioritizing projects under this section. Uniform standards established under this subsection must be approved by the board. The board shall consult the stakeholders committee from time to time regarding regional prioritization of projects.

(d) Each regional water planning group shall submit to the

board the prioritization developed by the group under this section together with the group's respective regional water plan developed and submitted under Section 16.053.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.

Sec. 15.437. PRIORITIZATION OF PROJECTS BY BOARD. (a) The board shall prioritize projects included in the state water plan for the purpose of providing financial assistance under this subchapter.

(b) The board shall establish a point system for prioritizing projects for which financial assistance is sought from the board. The system must include a standard for the board to apply in determining whether a project qualifies for financial assistance at the time the application for financial assistance is filed with the board.

(c) The board shall give the highest consideration in awarding points to projects that will have a substantial effect, including projects that will:

(1) serve a large population;

(2) provide assistance to a diverse urban and rural population;

(3) provide regionalization; or

(4) meet a high percentage of the water supply needs of the water users to be served by the project.

(d) In addition to the criteria provided by Subsection (c), the board must also consider at least the following criteria in prioritizing projects:

(1) the local contribution to be made to finance the project, including the up-front capital to be provided by the applicant;

(2) the financial capacity of the applicant to repay the financial assistance provided;

(3) the ability of the board and the applicant to timely leverage state financing with local and federal funding;

(4) whether there is an emergency need for the project, taking into consideration whether:

(A) the applicant is included at the time of the application on the list maintained by the commission of local public

water systems that have a water supply that will last less than 180 days without additional rainfall; and

(B) federal funding for which the project is eligible has been used or sought;

(5) if the applicant is applying for financial assistance for the project under Subchapter Q, whether the applicant is ready to proceed with the project at the time of the application, including whether:

(A) all preliminary planning and design work associated with the project has been completed;

(B) the applicant has acquired the water rights associated with the project;

(C) the applicant has secured funding for the project from other sources; and

(D) the applicant is able to begin implementing or constructing the project;

(6) the demonstrated or projected effect of the project on water conservation, including preventing the loss of water, taking into consideration, if applicable, whether the applicant has filed a water audit with the board under Section 16.0121 that demonstrates that the applicant is accountable with regard to reducing water loss and increasing efficiency in the distribution of water; and

(7) the priority given the project by the applicable regional water planning group under Section 15.436.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.

Sec. 15.438. ADVISORY COMMITTEE. (a) The State Water Implementation Fund for Texas Advisory Committee is composed of the following seven members:

(1) the comptroller, or a person designated by the comptroller;

(2) three members of the senate appointed by the lieutenant governor, including:

(A) a member of the committee of the senate having primary jurisdiction over matters relating to finance; and

(B) a member of the committee of the senate having primary jurisdiction over natural resources; and

(3) three members of the house of representatives appointed by the speaker of the house of representatives, including:

(A) a member of the committee of the house of representatives having primary jurisdiction over appropriations; and

(B) a member of the committee of the house of representatives having primary jurisdiction over natural resources.

(b) The following persons shall serve as staff support for the advisory committee:

(1) the deputy executive administrator of the board who is responsible for water science and conservation or a person who holds an equivalent position at the agency, or a person designated by that person;

(2) the deputy executive administrator of the board who is responsible for water resources planning and information or a person who holds an equivalent position at the agency, or a person designated by that person; and

(3) the chief financial officer of the board, or a person who holds an equivalent position at the agency.

(c) An appointed member of the advisory committee serves at the will of the person who appointed the member.

(d) The lieutenant governor shall appoint a co-presiding officer of the advisory committee from among the members appointed by the lieutenant governor, and the speaker of the house of representatives shall appoint a co-presiding officer of the committee from among the members appointed by the speaker.

(e) The advisory committee may hold public hearings, formal meetings, or work sessions. Either co-presiding officer of the advisory committee may call a public hearing, formal meeting, or work session of the advisory committee at any time. The advisory committee may not take formal action at a public hearing, formal meeting, or work session unless a quorum of the committee is present.

(f) Except as otherwise provided by this subsection, a member of the advisory committee is not entitled to receive compensation for service on the committee or reimbursement for expenses incurred in the performance of official duties as a member of the committee. Service on the advisory committee by a member of the senate or house of representatives is considered legislative service for which the member is entitled to reimbursement and other benefits in the same manner and to the same extent as for other legislative service.

(g) The advisory committee shall submit comments and

recommendations to the board regarding the use of money in the fund for use by the board in adopting rules under Section 15.439 and in adopting policies and procedures under Section 15.441. The submission must include:

(1) comments and recommendations on rulemaking related to the prioritization of projects in regional water plans and the state water plan in accordance with Sections 15.436 and 15.437;

(2) comments and recommendations on rulemaking related to establishing standards for determining whether projects meet the criteria provided by Section 15.434(b);

(3) an evaluation of the available programs for providing financing for projects included in the state water plan and guidelines for implementing those programs, including guidelines for providing financing for projects included in the state water plan that are authorized under Subchapter Q or R of this chapter, Subchapter E or F, Chapter 16, or Subchapter J, Chapter 17;

(4) an evaluation of the lending practices of the board and guidelines for lending standards;

(5) an evaluation of the use of funds by the board to provide support for financial assistance for water projects, including support for the purposes described by Section 15.435(c);

(6) an evaluation of whether premium financing programs should be established within the funds described by Section 15.435 to serve the purposes of this subchapter, especially in connection with projects described by Section 15.434(b);

(7) an evaluation of methods for encouraging participation in the procurement process by companies domiciled in this state or that employ a significant number of residents of this state; and

(8) an evaluation of the overall operation, function, and structure of the fund.

(h) The advisory committee shall review the overall operation, function, and structure of the fund at least semiannually and may provide comments and recommendations to the board on any matter.

(i) The advisory committee may adopt rules, procedures, and policies as needed to administer this section and implement its responsibilities.

(j) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

(k) The advisory committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as

provided by that chapter, the advisory committee is abolished and this section expires September 1, 2023.

(l) The advisory committee shall make recommendations to the board regarding information to be posted on the board's Internet website under Section 15.440(b).

(m) The advisory committee shall evaluate and may provide comments or recommendations on the feasibility of the state owning, constructing, and operating water supply projects, including reservoirs and major water supply conveyance infrastructure, through existing financial assistance programs under Subchapter E of this chapter, Subchapter E or F, Chapter 16, or other mechanisms.

(n) The executive administrator shall provide an annual report to the advisory committee on:

(1) the board's compliance with statewide annual goals relating to historically underutilized businesses; and

(2) the participation level of historically underutilized businesses in projects that receive funding related to a bond enhancement agreement under this subchapter.

(o) If the aggregate level of participation by historically underutilized businesses in projects that receive funding related to a bond enhancement agreement under this subchapter does not meet statewide annual goals adopted under Chapter 2161, Government Code, the advisory committee shall make recommendations to the board to improve the participation level.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.

Sec. 15.439. RULES. (a) The board shall adopt rules providing for the use of money in the fund that are consistent with this subchapter, including rules:

(1) establishing standards for determining whether projects meet the criteria provided by Section 15.434(b); and

(2) specifying the manner for prioritizing projects for purposes of Sections 15.436 and 15.437.

(b) The board shall give full consideration to the recommendations of the advisory committee before adopting rules under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff.

November 5, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 921 (S.B. 1511), Sec. 1, eff. September 1, 2017.

Sec. 15.440. REPORTING AND TRANSPARENCY REQUIREMENTS. (a) Not later than December 1 of each even-numbered year, the board shall provide a report to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature regarding the use of the fund, including the use of the fund to support projects that are for rural political subdivisions or agricultural water conservation or that are designed for water conservation or reuse as required by Section 15.434(b).

(b) The board shall post the following information on the board's Internet website regarding the use of the fund and regularly update the information posted:

(1) the progress made in developing needed water supply statewide and for the benefit of each regional water planning area;

(2) for each regional water planning area, a description of each project funded through bonds supported by a bond enhancement agreement entered into under Section 15.435, including:

(A) the expected date of completion of the project;

(B) the current status of the project;

(C) the amount of bonds issued and the terms of the bonds;

(D) a summary of the terms of the bond enhancement agreement; and

(E) the status of repayment of any loan provided in connection with the project, including an assessment of the risk of default based on a standard risk rating system;

(3) a description of the investment portfolio of the fund;

(4) the expenses incurred in investing money in the fund;

(5) the rate of return on the investment of money in the fund;

(6) a description of the point system for prioritizing projects established by the board under Section 15.437(b) and the number of points awarded by the board for each project;

(7) any nonconfidential information submitted to the board as part of an application for financial assistance under this

subchapter that is approved by the board;

(8) the administrative and operating expenses incurred by the board in developing the state water plan and providing financial assistance for projects included in the plan; and

(9) any other information required by board rule.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 147 (H.B. 280), Sec. 1, eff. September 1, 2015.

Sec. 15.441. POLICIES AND PROCEDURES TO MITIGATE OR MINIMIZE ADVERSE EFFECTS OF CERTAIN FEDERAL LAWS. The board shall adopt, and may amend from time to time at the board's discretion, policies and procedures for the purpose of mitigating or minimizing the adverse effects, if any, of federal laws and regulations relating to income taxes, arbitrage, rebates, and related matters that may restrict the board's ability to freely invest all or part of the fund or to receive and retain all the earnings from the fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.

SUBCHAPTER H. STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS

Sec. 15.471. DEFINITION. In this subchapter, "fund" means the state water implementation revenue fund for Texas.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.

Sec. 15.472. FUND. (a) The state water implementation revenue fund for Texas is a special fund in the state treasury outside the general revenue fund to be used by the board, without further legislative appropriation, only for the purpose of providing financing for projects included in the state water plan that are authorized under Subchapter Q or R of this chapter, Subchapter E or F, Chapter 16, or Subchapter J, Chapter 17. The board may establish

separate accounts in the fund. The board has legal title to money and investments in the fund until the money is disbursed as provided by this subchapter and board rules. It is the intent of the legislature that the fund will never be used:

(1) for a purpose other than the support of projects in the state water plan; or

(2) to certify that appropriations from the treasury are within the amount estimated to be available in a fund of the treasury affected by the appropriation.

(b) Money deposited to the credit of the fund may be used only as provided by this subchapter.

(c) The fund consists of:

(1) money transferred or deposited to the credit of the fund by law, including money from any source transferred or deposited to the credit of the fund at the board's discretion as authorized by law;

(2) the proceeds of any fee or tax imposed by this state that by statute is dedicated for deposit to the credit of the fund;

(3) any other revenue that the legislature by statute dedicates for deposit to the credit of the fund;

(4) investment earnings and interest earned on amounts credited to the fund;

(5) the proceeds from the sale of bonds, including revenue bonds issued by the board under this subchapter, that are designated by the board for the purpose of providing money for the fund;

(6) repayments of loans made from the fund;

(7) money from the sale, transfer, or lease of a project acquired, constructed, reconstructed, developed, or enlarged with money from the fund; and

(8) money disbursed to the fund from the state water implementation fund for Texas as authorized by Section 15.434.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.

Sec. 15.473. MANAGEMENT AND INVESTMENT OF FUND. (a) Money deposited to the credit of the fund shall be invested as determined by the board. The fund may be invested with the state treasury pool.

(b) The fund and any accounts established in the fund shall be

kept and maintained by or at the direction of the board.

(c) At the direction of the board, the fund and any accounts established in the fund may be managed by the comptroller or a corporate trustee that is a trust company or a bank that has the powers of a trust company for and on behalf of the board and pending their use for the purposes provided by this subchapter may be invested as provided by an order, resolution, or rule of the board.

(d) The comptroller or corporate trustee shall manage the fund in strict accordance with this subchapter and the orders, resolutions, and rules of the board.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.

Sec. 15.474. USE OF FUND. (a) Except as provided by Subsection (c), money in the fund may be used by the board only to provide financing or refinancing, under terms specified by the board, for projects included in the state water plan that are authorized under Subchapter Q or R of this chapter, Subchapter E or F, Chapter 16, or Subchapter J, Chapter 17, including water conservation or reuse projects designed to reduce the need for this state or political subdivisions of this state to develop additional water resources.

(b) Financing or refinancing of projects described by Subsection (a) may be provided by using money in the fund to make loans to eligible political subdivisions or to purchase bonds or other obligations of eligible political subdivisions bearing interest at a rate or rates determined by the board, including a rate or rates below prevailing market rates.

(c) The board may use money in the fund:

(1) as a source of revenue or security for:

(A) the payment of the principal of and interest on:

(i) revenue bonds issued by the board under this subchapter; or

(ii) other bonds issued by the board if the proceeds of the bonds will be deposited in the fund; or

(B) a bond enhancement agreement;

(2) to acquire loans or other assets from another fund or account administered by the board, including political subdivision

bonds sold or disposed of under Section 15.978 or 17.968; or

(3) to pay the necessary and reasonable expenses of paying agents, bond counsel, and financial advisory services and similar costs incurred by the board in administering the fund.

(d) The board, or comptroller or corporate trustee managing the fund at the direction of the board as provided by Section 15.473(c), shall withdraw from the fund and forward to another person any amounts, as determined by the board, for timely payment of:

(1) the principal of and interest on bonds described by Subsection (c)(1)(A) of this section that mature or become due; and

(2) any cost related to bonds described by Subsection (c)(1)(A) of this section that become due, including payments under related credit agreements or bond enhancement agreements.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.

Sec. 15.475. ISSUANCE OF REVENUE BONDS. (a) The board may issue revenue bonds for the purpose of providing money for the fund.

(b) The board may issue revenue bonds to refund revenue bonds or bonds and obligations issued or incurred in accordance with other provisions of law.

(c) Revenue bonds issued under this subchapter are special obligations of the board payable only from and secured by designated income and receipts of the fund, or of one or more accounts in the fund, including principal of and interest paid and to be paid on fund assets or income from accounts created within the fund by the board, as determined by the board.

(d) Revenue bonds issued under this subchapter do not constitute indebtedness of the state as prohibited by the constitution.

(e) The board may require fund participants to make charges, levy taxes, or otherwise provide for sufficient money to pay acquired obligations.

(f) Revenue bonds issued under this subchapter must be authorized by resolution of the board and must have the form and characteristics and bear the designations as the resolution provides.

(g) Revenue bonds issued under this subchapter may:

(1) bear interest at the rate or rates payable annually or

otherwise;

(2) be dated;

(3) mature at the time or times, serially, as term revenue bonds, or otherwise in not more than 50 years from their dates;

(4) be callable before stated maturity on the terms and at the prices, be in the denominations, be in the form, either coupon or registered, carry registration privileges as to principal only or as to both principal and interest and as to successive exchange of coupon for registered bonds or one denomination for bonds of other denominations, and successive exchange of registered revenue bonds for coupon revenue bonds, be executed in the manner, and be payable at the place or places inside or outside the state, as provided by the resolution;

(5) be issued in temporary or permanent form;

(6) be issued in one or more installments and from time to time as required and sold at a price or prices and under terms determined by the board to be the most advantageous reasonably obtainable; and

(7) be issued on a parity with and be secured in the manner as other revenue bonds authorized to be issued by this subchapter or may be issued without parity and secured differently than other revenue bonds.

(h) Section 17.955 applies to revenue bonds issued under this subchapter in the same manner as that section applies to water financial assistance bonds.

(i) All proceedings relating to the issuance of revenue bonds issued under this subchapter shall be submitted to the attorney general for examination. If the attorney general finds that the revenue bonds have been authorized in accordance with law, the attorney general shall approve the revenue bonds, and the revenue bonds shall be registered by the comptroller. After the approval and registration, the revenue bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.

(j) The proceeds received from the sale of revenue bonds issued under this subchapter may be deposited or invested in any manner and in such investments as may be specified in the resolution or other proceedings authorizing those obligations. Money in the fund or accounts created by this subchapter or created in the resolution or other proceedings authorizing the revenue bonds may be invested in

any manner and in any obligations as may be specified in the resolution or other proceedings.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.

Sec. 15.476. SUBCHAPTER CUMULATIVE OF OTHER LAWS. (a) This subchapter is cumulative of other laws on the subject, and the board may use provisions of other applicable laws in the issuance of bonds and other obligations and the execution of bond enhancement agreements, but this subchapter is wholly sufficient authority for the issuance of bonds and other obligations, the execution of bond enhancement agreements, and the performance of all other acts and procedures authorized by this subchapter.

(b) In addition to other authority granted by this subchapter, the board may exercise the authority granted to the governing body of an issuer with regard to the issuance of obligations under Chapter 1371, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.02, eff. November 5, 2013.

SUBCHAPTER I. FLOOD INFRASTRUCTURE FUND

Sec. 15.531. DEFINITIONS. In this subchapter:

(1) "Eligible political subdivision" means a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a municipality, or a county.

(2) "Flood project" means a drainage, flood mitigation, or flood control project, including:

(A) planning and design activities;

(B) work to obtain regulatory approval to provide nonstructural and structural flood mitigation and drainage;

(C) construction of structural flood mitigation and drainage infrastructure; and

(D) construction and implementation of nonstructural projects, including projects that use nature-based features to protect, mitigate, or reduce flood risk.

(3) "Infrastructure fund" means the flood infrastructure fund.

(4) "Metropolitan statistical area" means an area so designated by the United States Office of Management and Budget.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 2.01, eff. January 1, 2020.

Sec. 15.532. FINDINGS. The legislature finds that:

(1) the creation of the infrastructure fund and the administration of the fund by the board will encourage the development of nonstructural and structural flood mitigation in the state;

(2) the use of the infrastructure fund is in furtherance of the public purpose of mitigating the effects of flooding in the state; and

(3) the use of the infrastructure fund for the purposes provided by this subchapter is for the benefit of both the state and the political subdivisions to which the board makes financial assistance available in accordance with this subchapter and constitutes a program under Sections 49-d-3 and 52-a, Article III, Texas Constitution.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 2.01, eff. January 1, 2020.

Sec. 15.533. FLOOD INFRASTRUCTURE FUND. (a) The flood infrastructure fund is a special fund in the state treasury outside the general revenue fund.

(b) The infrastructure fund may be used by the board, without further legislative appropriation, only as provided by this subchapter.

(c) The infrastructure fund consists of:

(1) appropriations from the legislature for a purpose of the infrastructure fund;

(2) proceeds of general obligation bonds issued for a purpose of the infrastructure fund;

(3) any fees or other sources of revenue that the legislature dedicates for deposit to the infrastructure fund;

(4) repayments of loans made from the infrastructure fund;

(5) interest earned on money credited to the infrastructure

fund;

(6) depository interest allocable to the infrastructure fund;

(7) money from gifts, grants, or donations to the infrastructure fund; and

(8) money from revenue bonds or other sources designated by the board for deposit to the infrastructure fund.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 2.01, eff. January 1, 2020.

For contingent expiration of this section, see Section 2.03, Chapter 947 (S.B. 7), Acts of the 86th Legislature, Regular Session, 2019.

Sec. 15.534. USE OF INFRASTRUCTURE FUND. (a) The board may use the infrastructure fund only:

(1) to make a loan to an eligible political subdivision at or below market interest rates for a flood project;

(2) to make a grant or loan at or below market interest rates to an eligible political subdivision for a flood project to serve an area outside of a metropolitan statistical area in order to ensure that the flood project is implemented;

(3) to make a loan at or below market interest rates for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a flood project;

(4) to make a grant to an eligible political subdivision to provide matching funds to enable the eligible political subdivision to participate in a federal program for a flood project;

(5) to make a grant to an eligible political subdivision for a flood project if the board determines that the eligible political subdivision does not have the ability to repay a loan;

(6) as a source of revenue or security for the payment of principal and interest on bonds issued by the board if the proceeds of the sale of the bonds will be deposited in the infrastructure fund;

(7) to pay the necessary and reasonable expenses of the board in administering the infrastructure fund; and

(8) to make transfers to the research and planning fund created under Section 15.402 of this chapter.

(b) Principal and interest payments on loans made under Subsection (a)(3) may be deferred for not more than 10 years or until construction of the flood project is completed, whichever is earlier.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 2.01, eff. January 1, 2020.

Text of section effective on adoption by the Texas Water Development Board of an initial state flood plan in accordance with legislation of the 86th Legislature, Regular Session, 2019, that requires the creation of a state flood plan.

Sec. 15.5341. USE OF INFRASTRUCTURE FUND. (a) The board may use the infrastructure fund only to provide financing for flood projects included in the state flood plan.

(b) Money from the infrastructure fund may be awarded to several eligible political subdivisions for a single flood project.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 2.03(2).

Sec. 15.535. APPLICATION REQUIREMENTS. (a) Except as provided by Subsection (c), an eligible political subdivision applying for financial assistance under this subchapter for a proposed flood project must demonstrate in the application that:

(1) the eligible political subdivision has acted cooperatively with other political subdivisions to address flood control needs in the area in which the eligible political subdivisions are located;

(2) all eligible political subdivisions substantially affected by the proposed flood project have participated in the process of developing the proposed flood project;

(3) the eligible political subdivisions, separately or in cooperation, have held public meetings to accept comment on proposed flood projects from interested parties; and

(4) the technical requirements for the proposed flood project have been completed and compared against any other potential flood projects in the same area.

(b) The application must include an analysis of whether the proposed flood project could use floodwater capture techniques for

water supply purposes, including floodwater harvesting, detention or retention basins, or other methods of capturing storm flow or unappropriated flood flow.

(c) An eligible political subdivision applying for assistance under Section 15.534(a)(3) is not required to make the demonstration described by Subsection (a)(4) of this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 2.01, eff. January 1, 2020.

Sec. 15.536. APPROVAL OF APPLICATIONS. On review and recommendation by the executive administrator, the board may approve an application only if the board finds that:

(1) the application and the assistance applied for meet the requirements of this subchapter and board rules;

(2) the application demonstrates a sufficient level of cooperation among eligible political subdivisions and includes all of the eligible political subdivisions substantially affected by the flood project; and

(3) the taxes or other revenue, or both the taxes and other revenue, pledged by the applicant will be sufficient to meet all the obligations assumed by the eligible political subdivision.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 2.01, eff. January 1, 2020.

Sec. 15.537. RULES. The board shall adopt rules necessary to carry out this subchapter, including rules:

(1) that establish procedures for an application for and for the award of financial assistance;

(2) for the investment of money; and

(3) for the administration of the infrastructure fund.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 2.01, eff. January 1, 2020.

Sec. 15.538. INFORMATION CLEARINGHOUSE. The board shall act as a clearinghouse for information about state and federal flood

planning, mitigation, and control programs that may serve as a source of funding for flood projects.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 2.01, eff. January 1, 2020.

Sec. 15.539. LIABILITY. Participation in cooperative flood planning to obtain money under this subchapter does not subject the state or an eligible political subdivision to civil liability in regard to a flood project.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 2.01, eff. January 1, 2020.

Sec. 15.540. ADVISORY COMMITTEE. (a) In this section, "advisory committee" means the State Water Implementation Fund for Texas Advisory Committee described by Section 15.438.

(b) The advisory committee shall:

(1) review the overall operation, function, and structure of the infrastructure fund at least semiannually and may provide comments and recommendations to the board on any matter; and

(2) make recommendations to the board regarding information on the infrastructure fund to be posted on the board's Internet website.

(c) The advisory committee may:

(1) submit comments and recommendations to the board regarding the use of money in the infrastructure fund and for use by the board in adopting rules; and

(2) adopt rules, procedures, and policies as needed to administer this section and implement its responsibilities.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 2.01, eff. January 1, 2020.

SUBCHAPTER J. FINANCIAL ASSISTANCE FOR WATER POLLUTION CONTROL

Sec. 15.601. CREATION OF FUND. (a) The state water pollution control revolving fund shall be administered by the board under this subchapter and rules adopted by the board. The fund shall be used to

provide financial assistance in accordance with the capitalization grant program established under the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) and Section 15.603 of this code.

(b) The board may establish one or more additional state revolving funds in accordance with other capitalization grant programs hereafter established by federal agencies or otherwise authorized by federal law. Such additional state revolving funds shall be held and administered by the board in the same manner as provided by Section 15.603 of this code for the administration of the state water pollution control revolving fund, except that such additional state revolving funds shall be held and administered in accordance with the federal legislation or federal agency program under which the additional state revolving fund was established and shall be used to provide financial assistance to political subdivisions for public works in accordance with such legislation or program. In the administration of such additional state revolving funds, the board shall have all rights and powers authorized to the board pursuant to this subchapter in connection with the administration of the state water pollution control revolving fund, together with such additional rights and powers as are necessary or appropriate in connection with the administration of such additional state revolving funds.

(c) The board may, in its discretion, provide for the state water pollution control revolving fund to be merged into any additional state revolving fund hereafter created.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 1, eff. June 17, 1987.
Amended by Acts 1993, 73rd Leg., ch. 184, Sec. 1, eff. May 19, 1993; Acts 2001, 77th Leg., ch. 1234, Sec. 19, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 428 (S.B. 942), Sec. 1, eff. September 1, 2019.

Sec. 15.602. DEFINITIONS. In this subchapter:

(1) "Additional state revolving fund" means any state revolving fund hereafter established by the board to provide financial assistance to political subdivisions for public works in accordance with a capitalization grant program hereafter established by a federal agency or otherwise authorized by federal law.

(2) "Authorized investments" means any authorized investments described in Section 404.024, Government Code.

(3) "Community water system" means a public water system that:

(A) serves at least 15 service connections used by year-round residents of the area served by the system; or

(B) regularly serves at least 25 year-round residents.

(4) "Construction" shall have the meaning assigned by the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(5) "Disadvantaged community" means an area meeting criteria established by board rule, which criteria shall be based on measures that may include single-family residential property valuation, income levels of residents of the area, or other similarly appropriate measures.

(5-a) "Eligible lending institution" means a financial institution that makes commercial loans, is either a depository of state funds or an institution of the Farm Credit System headquartered in this state, agrees to participate in a linked deposit program established under Section 15.611 and to provide collateral equal to the amount of linked deposits placed with it, and meets any other requirements established by board rule.

(6) "Federal Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).

(7) "Nonprofit noncommunity water system" means a public water system that is not operated for profit and that:

(A) is owned by a political subdivision or nonprofit entity; and

(B) is not a community water system.

(8) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state or any interstate body, as defined by Section 502 of the federal act, including a political subdivision as defined by this subchapter, if the person is eligible for financial assistance under federal law establishing the revolving fund.

(9) "Political subdivision" means a municipality, intermunicipal, interstate, or state agency, any other public entity eligible for assistance under this subchapter, or a nonprofit water supply corporation created and operating under Chapter 67, if such entity is eligible for financial assistance under federal law establishing the state revolving fund or an additional state

revolving fund.

(10) "Public water system" means a system that is owned by any person and that meets the definition of public water system in the Safe Drinking Water Act.

(11) "Public works" means any project to acquire, construct, improve, repair, or otherwise provide any buildings, structures, facilities, equipment, or other real or personal property or improvements designed for public use, protection, or enjoyment undertaken by a political subdivision and paid for, in whole or in part, out of public funds.

(12) "Revolving fund" means the state water pollution control revolving fund.

(13) "Safe Drinking Water Act" means Title XIV of the federal Public Health Service Act, commonly known as the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f et seq.).

(14) "Safe drinking water revolving fund" means the fund established by the board as an additional state revolving fund to provide financial assistance in accordance with the federal program established pursuant to the provisions of the Safe Drinking Water Act.

(15) "Treatment works" has the meaning established by the federal act and the eligible components of the management programs established by Sections 319 and 320 of the federal act.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 1, eff. June 17, 1987. Amended by Acts 1993, 73rd Leg., ch. 184, Sec. 2, eff. May 19, 1993; Acts 1993, 73rd Leg., ch. 477, Sec. 6, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 1010, Sec. 6.15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.56, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 4.13, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 19(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 1, eff. Sept. 1, 2003.

Sec. 15.603. CREATION AND ADMINISTRATION OF PROGRAM. (a) The revolving fund is held separately from other funds by the board outside the State Treasury to provide financial assistance to persons for projects eligible for assistance under the federal act, including projects eligible under Section 603(c) of the federal act (33 U.S.C. Section 1383(c)), and to provide linked deposits to eligible lending

institutions for loans to persons for nonpoint source pollution control projects.

(b) The board may execute agreements with the Environmental Protection Agency or any other federal agency to establish and administer the revolving fund and may discharge the duties and responsibilities required for the administration of the revolving fund.

(c) The revolving fund consists of money derived from federal grants, direct appropriations, investment earnings on amounts credited to the revolving fund, and, at the board's discretion, from any and all sources available.

(d) The revolving fund shall remain available in perpetuity for providing financial assistance in accordance with the federal act.

(e) All payments of principal and interest and all proceeds from the sale, refunding, or prepayment of bonds of political subdivisions acquired in carrying out the purposes of the revolving fund shall be deposited in the revolving fund.

(f) The board shall administer the revolving fund in the manner provided by the federal act, state law, and the rules of the board.

(g) The revolving fund and any accounts established in the revolving fund shall be kept and maintained by or at the direction of the board and do not constitute and are not a part of the State Treasury. However, at the direction of the board, the revolving fund or accounts in the revolving fund may be kept and held in escrow and in trust by the comptroller for and on behalf of the board, shall be used only as provided by this subchapter, and pending such use shall be invested in authorized investments as provided by any order, resolution, or rule of the board. Legal title to money and investments in the revolving fund is in the board unless or until paid out as provided by this subchapter, the federal act, and the rules of the board. The comptroller, as custodian, shall administer the funds strictly and solely as provided by this subchapter and in the orders, resolutions, and rules, and the state shall take no action with respect to the revolving fund other than that specified in this subchapter, the federal act, and the rules of the board.

(h) The board may establish a separate account in the revolving fund to be used solely for providing financial assistance to persons for nonpoint source pollution control and abatement projects. The account shall be composed solely of funds appropriated by the legislature, funds provided as gifts or grants by the United States,

interest earnings on amounts credited to the account, and repayments of loans made from the account. The board shall adopt rules establishing the criteria for eligibility and the terms of assistance for persons that receive financial assistance from the account.

(i) Repealed by Acts 2019, 86th Leg., R.S., Ch. 428 (S.B. 942), Sec. 5, eff. September 1, 2019.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 1, eff. June 17, 1987. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 20.03, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 4.14, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1234, Sec. 20, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 19(b), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 18.004, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 428 (S.B. 942), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 428 (S.B. 942), Sec. 5, eff. September 1, 2019.

Sec. 15.604. FINANCIAL ASSISTANCE UNDER THE REVOLVING FUND. (a) The board may use the revolving fund for financial assistance only as provided by the federal act:

(1) to make loans, on the conditions that:

(A) the loan is made at or below market interest rates, including an interest-free loan;

(B) principal and interest payments will begin not later than one year after completion of the project to be financed and the loan will be fully amortized not later than the expiration date of the term of the loan;

(C) the recipient of the loan will establish a dedicated source of revenue for repayment of the loan; and

(D) the revolving fund will be credited with all payments of principal of and interest on the loan;

(2) to buy or refinance the debt obligation of political subdivisions at or below market rates if the debt obligations were incurred after March 7, 1985;

(3) to guarantee or purchase insurance for political

subdivisions if the guarantee or insurance would improve access to market credit or reduce interest rates;

(4) as a source of revenue or security for the payment of principal and interest on bonds issued by the state if the proceeds of the sale of those bonds will be deposited in the revolving fund;

(5) to provide loan guarantees to similar revolving funds established by municipalities or intermunicipal agencies;

(6) to earn interest on revolving fund accounts;

(7) for the reasonable costs of administering the revolving fund and conducting activities provided for by Title VI of the federal act, except that those amounts may not exceed the amount authorized under Title VI of the federal act; and

(8) for other purposes as provided by the federal act.

(b) The board shall adopt rules specifying the manner in which any additional state revolving fund hereafter established by the board, or any capitalization grant under the state water pollution control revolving fund, the safe drinking water revolving fund, or any additional state revolving fund, may be used to provide financial assistance to an eligible applicant for public works. Such rules shall require financial assistance to be provided for the purpose or purposes and on the terms authorized by the federal legislation or federal agency program under which the additional state revolving fund was established or the capitalization grant was awarded.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 1, eff. June 17, 1987.
Amended by Acts 1993, 73rd Leg., ch. 184, Sec. 3, eff. May 19, 1993; Acts 2001, 77th Leg., ch. 966, Sec. 4.15, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 19(c), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1243 (S.B. 2314), Sec. 1, eff. June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 428 (S.B. 942), Sec. 3, eff. September 1, 2019.

Sec. 15.6041. FINANCIAL ASSISTANCE UNDER THE SAFE DRINKING WATER REVOLVING FUND. (a) The safe drinking water revolving fund shall be administered by the board under this subchapter and rules adopted by the board. The safe drinking water revolving fund shall

be held and administered by the board in the same manner as provided by Section 15.603, except that the safe drinking water revolving fund shall be held and administered in accordance with the Safe Drinking Water Act and shall be used to provide financial assistance in accordance with that act and in the manner provided by rules adopted by the board:

(1) to political subdivisions for community water systems and for nonprofit noncommunity water systems;

(2) to persons other than political subdivisions for community water systems or nonprofit noncommunity water systems from the account established by Subsection (b)(1);

(3) to persons, including political subdivisions, for service to disadvantaged communities from the account established by Subsection (b)(2); and

(4) for other purposes authorized by the Safe Drinking Water Act.

(b) In addition to other accounts the board may establish in the safe drinking water revolving fund, the board shall establish the following separate accounts:

(1) the community/noncommunity water system financial assistance account, to be used solely for providing financial assistance to persons, other than political subdivisions, providing services through a community water system or a nonprofit noncommunity water system, which account shall be composed solely of funds appropriated by the legislature, funds provided as gifts or grants by the United States government, interest earnings on amounts credited to the account, and repayments of loans made from the account; and

(2) the disadvantaged community account, to be used solely for providing financial assistance under the terms of Subsections (c) and (d), which account shall be composed solely of funds appropriated by the legislature, funds provided as gifts or grants by the United States government, interest earnings on amounts credited to the account, and repayments of loans made from the account.

(c) The board may provide financial assistance from the disadvantaged community account to:

(1) a political subdivision:

(A) that is a disadvantaged community; or

(B) for a project serving an area that:

(i) is located outside the boundaries of the political subdivision; and

(ii) meets the definition of a disadvantaged community; or

(2) an owner of a community water system that is ordered by the commission to provide service to a disadvantaged community, provided that the financial assistance is for the sole purpose of providing service to a disadvantaged community.

(d) In providing financial assistance from the disadvantaged community account, the board shall determine the amount of a loan which the political subdivision cannot repay based on affordability criteria established by the board by rule. The board shall forgive repayment of that portion of the principal of the loan which the board determines the political subdivision cannot repay. Financial assistance from the disadvantaged community account may not exceed the allowable percentage of the amount of the capitalization grant received by the state pursuant to the Safe Drinking Water Act.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.16, eff. Sept. 1, 1997.

Sec. 15.6042. CROSS-COLLATERALIZATION OF FUNDS. (a) In this section, "state revolving fund bonds" means revenue bonds issued by the board to provide funds for the revolving fund, the safe drinking water revolving fund, or an additional state revolving fund.

(b) Notwithstanding any other law to the contrary, the board by resolution may approve the use of assets of the revolving fund, the safe drinking water revolving fund, or an additional state revolving fund as a source of revenue or security, or both revenue and security, for the payment of the principal of and interest on state revolving fund bonds.

Added by Acts 2015, 84th Leg., R.S., Ch. 95 (H.B. 1224), Sec. 1, eff. May 23, 2015.

Sec. 15.605. RULES. The board shall adopt necessary rules to carry out this subchapter.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 1, eff. June 17, 1987.

Sec. 15.606. LENDING RATE. The board shall determine and provide for the lending rates to be charged on loans from the revolving fund.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 1, eff. June 17, 1987.

Sec. 15.607. APPROVAL OF APPLICATION. On review of recommendations by the executive administrator, the board by resolution may approve an application if the board finds that in its opinion the revenue or taxes or both revenue and taxes pledged by the applicant will be sufficient to meet all the obligations assumed by the applicant and that the application and assistance applied for meet the requirements of the federal act and state law, including Section 16.4021.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 1, eff. June 17, 1987.
Amended by Acts 2001, 77th Leg., ch. 966, Sec. 4.16, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 4, eff. September 1, 2019.

Sec. 15.608. APPROVAL AND REGISTRATION. The board may not buy or refinance any bonds or securities or guarantee or purchase insurance for bonds or securities of political subdivisions that have not been approved by the attorney general and registered by the comptroller.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 1, eff. June 17, 1987.

Sec. 15.609. RECOVERY OF ADMINISTRATIVE COSTS. (a) The board may charge a recipient of financial assistance from the revolving fund or an additional state revolving fund an origination fee and an annual fee. The board by rule shall set the fees at amounts it considers necessary to recover the costs incurred by the board in administering the revolving fund or an additional state revolving fund that are not paid from that fund.

(b) The board may establish one or more operating funds to

finance the administration of the revolving fund or an additional state revolving fund. An operating fund must be held outside the state treasury and separate from the fund to which it relates. The board shall deposit to the credit of the appropriate operating fund the fees collected under Subsection (a). The board shall use money deposited to the credit of an operating fund to pay the board's costs of administering the revolving fund or additional state revolving fund to which the operating fund relates, including the cost of servicing debt obligations of recipients of financial assistance made available from the revolving fund or additional state revolving fund.

(c) The board may not transfer money in the revolving fund or an additional state revolving fund to an operating fund, but the board may transfer money in an operating fund to the revolving fund or additional state revolving fund to which the operating fund relates.

(d) Money in an operating fund shall be invested in authorized investments as provided by board order, resolution, or rule.

(e) The board may agree with the holder of a bond the proceeds of which will be deposited in the revolving fund or an additional state revolving fund that the board will use money in an operating fund only as provided by this section.

Added by Acts 1995, 74th Leg., ch. 281, Sec. 1, eff. June 5, 1995.

Sec. 15.610. LINKED DEPOSIT. A linked deposit is a deposit governed by a written deposit agreement between the board and an eligible lending institution that provides that:

(1) the eligible lending institution pay interest on the deposit at a rate determined by the board;

(2) the state not withdraw any part of the deposit before the expiration of a period set by a written advance notice of the intention to withdraw; and

(3) the eligible lending institution agree to lend the value of the deposit to a person at a maximum rate that is the rate paid by the eligible lending institution to the board plus a maximum of four percent.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(d), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 4, eff. Sept. 1, 2003.

Sec. 15.611. LINKED DEPOSIT PROGRAM. (a) The board by rule may establish a nonpoint source pollution control linked deposit program in accordance with this subchapter.

(b) An eligible lending institution may participate in the program established under this section as provided by this subchapter.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(d), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 4, eff. Sept. 1, 2003.

Sec. 15.612. APPLICATION BY ELIGIBLE LENDING INSTITUTIONS TO PARTICIPATE IN LINKED DEPOSIT PROGRAM. To participate in the nonpoint source pollution control linked deposit program, an eligible lending institution must:

(1) solicit loan applications, which must contain a description of a proposed nonpoint source pollution control project;

(2) review applications to determine if applicants are eligible and creditworthy; and

(3) submit the applications of eligible and creditworthy applicants to the executive administrator with a certification:

(A) of the interest rate applicable to each applicant by the eligible lending institution; and

(B) of the proposed project by the appropriate person as required by Section 15.613.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(d), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 4, eff. Sept. 1, 2003.

Sec. 15.613. CERTIFICATION OF PROJECT. (a) An eligible lending institution must obtain from a director of a soil and water conservation district certification of an agricultural or silvicultural nonpoint source pollution control project proposed for the district. The certification must state that:

(1) the applicant of the proposed project has a water quality management plan certified by the State Soil and Water Conservation Board; and

(2) the project furthers or implements the plan.

(b) An eligible lending institution must obtain from the executive director certification of a proposed nonpoint source

pollution control project that is not an agricultural or silvicultural nonpoint source pollution control project. The certification must state that the applicant's proposed project implements the state's nonpoint source pollution management plan.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(d), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 4, eff. Sept. 1, 2003.

Sec. 15.614. APPROVAL OR REJECTION OF APPLICATION. The board may approve or reject an application of an eligible lending institution to participate in the program. The board may delegate its authority to approve or reject an application to the executive administrator.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(d), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 4, eff. Sept. 1, 2003.

Sec. 15.615. DEPOSIT AGREEMENT. If the board approves an application of an eligible lending institution, the board and the eligible lending institution shall enter into a written deposit agreement. The agreement shall contain the conditions on which the linked deposit is made. On execution of the agreement, the board shall place a linked deposit from the revolving fund with the eligible lending institution in accordance with the agreement. A delay in payment or a default on a loan by an applicant does not affect the validity of the deposit agreement.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(d), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 4, eff. Sept. 1, 2003.

Sec. 15.616. COMPLIANCE. (a) On accepting a linked deposit, an eligible lending institution must lend money to an approved applicant in accordance with the deposit agreement and this subchapter. The eligible lending institution shall forward a compliance report to the board in accordance with board rules. The board shall adopt rules regarding the compliance report.

(b) The board shall monitor compliance with this subchapter and inform the comptroller of noncompliance on the part of an eligible

lending institution.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(d), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 4, eff. Sept. 1, 2003.

Sec. 15.617. STATE LIABILITY PROHIBITED. The state is not liable to an eligible lending institution for payment of the principal, interest, or any late charges on a loan made to an approved applicant. A linked deposit is not an extension of the state's credit within the meaning of any state constitutional prohibition.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(d), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 4, eff. Sept. 1, 2003.

Sec. 15.618. LIMITATIONS ON PROGRAM. (a) The maximum amount of a loan under the linked deposit program is $250,000.

(b) The board may withdraw linked deposits from an eligible lending institution if the institution ceases to be either a state depository or a Farm Credit System institution headquartered in this state.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(d), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 4, eff. Sept. 1, 2003.

SUBCHAPTER K. TEXAS WATER BANK

Sec. 15.701. DEFINITIONS. In this subchapter:

(1) "Deposit" means the placement of a water right or the right to use water in the water bank for transfer.

(2) "Depositor" means a person who deposits or has on deposit a water right in the water bank or trust.

(3) "Person" includes but is not limited to any individual, corporation, organization, government, or governmental subdivision or agency, including the board, business trust, estate, trust, partnership, association, and any other legal entity.

(4) "Transfer" means the conveyance of a water right or the right to use water under a water right in any of the following manners:

(A) the conveyance of legal title to a water right; or

(B) a contract or option contract to allow use of a water right.

(5) "Trust" means the Texas Water Trust.

(6) "Water bank" or "bank" means the Texas Water Bank.

(7) "Water right" means a right acquired or authorized under the laws of this state to impound, divert, or use state water, underground water, or water from any source to the extent authorized by law.

Added by Acts 1993, 73rd Leg., ch. 647, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 2.13, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.14, eff. Sept. 1, 2001.

Sec. 15.702. CREATION OF BANK. The Texas Water Development Board shall establish the Texas Water Bank. The board shall administer the water bank to facilitate water transactions to provide sources of adequate water supplies for use within the State of Texas.

Added by Acts 1993, 73rd Leg., ch. 647, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 2.14, eff. Sept. 1, 1997.

Sec. 15.703. OPERATION OF THE BANK; RULES. (a) The board may take all actions necessary to operate the water bank and to facilitate the transfer of water rights from the water bank for future beneficial use including but not limited to:

(1) negotiating a sale price and terms acceptable to the depositor and purchaser;

(2) maintaining a registry of water bank deposits and those water users in need of additional supplies;

(3) informing water users in need of additional supply of water rights available in the bank;

(4) encouraging water right holders to implement water conservation practices and deposit the right to use the conserved water into the bank;

(5) establishing requirements for deposit of a water right into the water bank including minimum terms for deposit;

(6) purchasing, holding, and transferring water or water

rights in its own name;

(7) establishing regional water banks;

(8) acting as a clearinghouse for water marketing information including water availability, pricing of water transactions, environmental considerations, and potential buyers and sellers of water rights;

(9) preparing and publishing a manual on structuring water transactions;

(10) accepting and holding donations of water rights to meet instream, water quality, fish and wildlife habitat, or bay and estuary inflow needs;

(11) entering into contracts with persons to pay for feasibility studies or the preparation of plans and specifications relating to water conservation efforts or to estimate the amount of water that would be saved through conservation efforts; and

(12) other actions to facilitate water transactions.

(b) The board may adopt rules necessary for implementation of the Texas Water Bank.

(c) The board may contract with any person to achieve the purposes of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 647, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 2.15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 61, Sec. 1, eff. May 10, 1999.

Sec. 15.7031. TEXAS WATER TRUST. (a) The Texas Water Trust is established within the water bank to hold water rights dedicated to environmental needs, including instream flows, water quality, fish and wildlife habitat, or bay and estuary inflows.

(b) The board, in consultation with the Parks and Wildlife Department and the commission, shall adopt rules governing the process for holding and transferring water rights.

(c) The dedication of any water rights placed in trust must be reviewed and approved by the commission, in consultation with the board and the Parks and Wildlife Department. In addition, the Department of Agriculture may provide input to the commission, as appropriate, during the review and approval process for dedication of water rights.

(d) Water rights may be held in the trust for a term specified

by contractual agreement or in perpetuity.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 2.16, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 456, Sec. 2, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 2, eff. June 18, 1999.

Sec. 15.704. TRANSFERS AND CONDITIONS. (a) A water right may be deposited in the water bank for an initial term of up to 10 years, unless otherwise held in the Texas Water Trust as established under Section 15.7031 of this code, during which time the water right is exempt from cancellation by the commission under the terms of Subchapter E of Chapter 11 of this code. A water right is exempt from cancellation under this subsection only once even if it has been transferred or redeposited.

(b) The commission may not bring a cancellation action under Subchapter E of Chapter 11 of this code for a 10-year period following commission approval of any necessary actions relating to a water right which has been transferred while on deposit in the water bank.

(c) A contract or option contract to allow use of a water right under this subchapter:

(1) may include a requirement that the purchaser show diligence in pursuing feasible and practicable alternative water supplies; and

(2) does not vest any right in the purchaser beyond the stated terms and conditions of the contract or option contract.

Added by Acts 1993, 73rd Leg., ch. 647, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 2.17, eff. Sept. 1, 1997.

Sec. 15.705. FEES. (a) The board may charge a transaction fee per transfer not to exceed one percent of the value of the water or water right received into or transferred from the water bank to cover expenses of the board in operating the water bank.

(b) The board shall place the fees in the water bank account of the water assistance fund where they shall be separately accounted for and used, with interest, only for the administration and operation of the water bank by the board.

Added by Acts 1993, 73rd Leg., ch. 647, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1999, 76th Leg., ch. 61, Sec. 2, eff. May 10, 1999.

Sec. 15.706. REPORTS. The commission and the board shall provide ready access by the other agency through manual or computer capabilities to all water rights permits, final water rights decisions, applications, amendments, contracts, computerized files, computer programs, and other information related to water rights and to the operation of the water bank. The commission shall provide the board with all notices of proposed water rights actions.

Added by Acts 1993, 73rd Leg., ch. 647, Sec. 1, eff. Aug. 30, 1993.

Sec. 15.707. WATER BANK ACCOUNT. (a) The water bank account is created as a special account in the water assistance fund and is composed of:

(1) money appropriated to the board for the program;

(2) fees collected by the board under this subchapter;

(3) money transferred to the account from the water assistance fund in Section 15.011(c) of this code;

(4) grants, contracts, gifts, or other such funds that the board may receive relating to this subchapter;

(5) money received from the transfer of water or water rights held in the board's name in the bank; and

(6) interest earned on the investment of money in the account.

(b) The money in the account may be used only for the administration and operation of the water bank by the board under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 647, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1999, 76th Leg., ch. 61, Sec. 3, eff. May 10, 1999.

Sec. 15.708. OTHER TRANSFERS. Nothing in this subchapter shall prevent the sale or purchase of water or water rights by or through persons or entities outside of the water bank or the creation and operation of water banks by other persons to the extent allowed by law.

Added by Acts 1993, 73rd Leg., ch. 647, Sec. 1, eff. Aug. 30, 1993.

SUBCHAPTER L. PLUMBING IMPROVEMENT LOANS

Sec. 15.731. DEFINITIONS. In this subchapter:

(1) "Fund" means the plumbing loan fund.

(2) "Plumbing assistance loan" means a loan provided by the board to a political subdivision for the political subdivision's plumbing improvement loan program.

(3) "Plumbing improvement loan" means a loan provided by a political subdivision to an individual under this subchapter.

(4) "Political subdivision" means a county, a municipality, a nonprofit member-owned, member-controlled water supply corporation organized and operating under Chapter 67, or a district or authority created and operating under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.

(5) "Water conservation" has the meaning assigned by Section 17.921 of this code.

Added by Acts 1991, 72nd Leg., ch. 294, Sec. 6, eff. June 7, 1991. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.57, eff. Sept. 1, 1999.

Sec. 15.732. PLUMBING LOAN FUND. (a) The plumbing loan fund is created.

(b) The fund is held separately from other funds outside the state treasury. The board shall keep and maintain the fund and any accounts established in the fund.

(c) At the direction of the board, the fund or accounts in the fund may be kept and held in escrow and in trust by the comptroller for and on behalf of the board. If the fund or accounts in the fund are held in escrow and in trust by the comptroller, the fund or accounts may be used only as provided by this subchapter and, pending their use, shall be invested in authorized investments as provided by any order, resolution, or rule of the board.

(d) Legal title to money and investments in the fund is in the board unless or until paid out as provided by this subchapter or rules of the board.

(e) The comptroller, as custodian, shall administer the funds

strictly and solely as provided by this subchapter and in the orders, resolutions, and rules of the board, and the state shall take no action with respect to the fund other than that specified in this subchapter, an agreement made with the Environmental Protection Agency or another federal agency, applicable federal requirements, and the rules of the board.

Added by Acts 1991, 72nd Leg., ch. 294, Sec. 6, eff. June 7, 1991. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 20.04, eff. Sept. 1, 1997.

Sec. 15.733. ADMINISTRATION AND OPERATION OF FUND. (a) The board shall administer the fund in accordance with state law, rules of the board, and any federal requirements imposed because of a grant of money to the fund by an agency of the federal government.

(b) The board may execute agreements with the Environmental Protection Agency or any other federal agency to establish and administer the fund and may discharge the duties and responsibilities required for the administration of the fund.

(c) The fund consists of money derived from federal grants, from earnings on the investment of money credited to the fund, and, at the board's discretion, from any other available source.

(d) The board shall deposit money received for repayment of a plumbing assistance loan made to a political subdivision in the fund.

(e) At the direction of the governor, any money in the fund may be transferred to the state water pollution control revolving fund under Subchapter J of this chapter.

(f) The fund remains available in perpetuity for providing loans under this subchapter, except to the extent that the fund may be reduced or eliminated as provided by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 294, Sec. 6, eff. June 7, 1991.

Sec. 15.734. USE OF FUND. The board may use money in the fund, unless prohibited by an agreement made with a federal agency under this subchapter, to:

(1) make a plumbing assistance loan;

(2) administer the fund; and

(3) grant or lend money to a political subdivision to

defray the political subdivision's expenses incurred in administering a plumbing improvement loan program.

Added by Acts 1991, 72nd Leg., ch. 294, Sec. 6, eff. June 7, 1991.

Sec. 15.735. APPLICATION SUBMISSION AND APPROVAL. (a) A political subdivision located in the county of Brewster, Cameron, El Paso, Hidalgo, Hudspeth, Maverick, Presidio, Starr, Terrell, Val Verde, Webb, or Zapata in which residences do not have water or wastewater facilities that meet minimum standards established by the commission or in any other area designated by federal law to benefit from the fund may submit to the board an application for a plumbing assistance loan in accordance with rules adopted by the board. The application must include:

(1) the legal name of the political subdivision and a citation to the law under which it operates and was created;

(2) a description of the water conservation methods to be used in the provision of water and wastewater service in the area the political subdivision proposes to affect by its plumbing improvement loan program;

(3) a map showing the location of the area the political subdivision proposes to affect by its plumbing improvement loan program;

(4) a description of the subdivision's proposed plumbing improvement loan program; and

(5) other information as required by board rule.

(b) The board may approve a plumbing assistance loan to a political subdivision only if the political subdivision is in a county that has adopted the model rules developed under Section 16.343 of this code. The board may approve a plumbing assistance loan to a municipality only if the municipality has adopted the model rules developed under Section 16.343 of this code.

(c) The board may approve a plumbing assistance loan to a political subdivision only if the political subdivision is, or is in an area within the jurisdiction of, an authorized agent of the commission under Subchapter C, Chapter 366, Health and Safety Code.

(d) The board may not approve an application for a plumbing assistance loan to a political subdivision unless the board finds that the political subdivision is financially capable of managing a

plumbing improvement loan program and that the public interest will be served by the plumbing assistance loan.

(e) The board shall set interest rates to be charged to political subdivisions on plumbing assistance loans.

Added by Acts 1991, 72nd Leg., ch. 294, Sec. 6, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.287, eff. Sept. 1, 1995.

Sec. 15.736. POLITICAL SUBDIVISION PLUMBING IMPROVEMENT LOAN PROGRAM ADMINISTRATION; PLUMBING ASSISTANCE LOAN REPAYMENT. (a) A political subdivision that receives a plumbing assistance loan shall establish and administer a program to make plumbing improvement loans to individuals at an interest rate lower than the current market rate, including charging no interest.

(b) A political subdivision may use the proceeds from a plumbing assistance loan to make a plumbing improvement loan to be used to pay:

(1) costs to connect a residence to a water distribution system;

(2) costs to provide yard service connections;

(3) costs to provide a residence with indoor plumbing facilities and fixtures;

(4) costs of connecting a residence to a sewer collection system or of providing a residence with a suitable on-site wastewater disposal system for the residence to meet applicable county or municipal code requirements;

(5) costs of building improvements or correction of building deficiencies necessary to allow plumbing to be installed in a residence;

(6) necessary connection fees and permit fees; or

(7) necessary costs of design related to plumbing improvements.

(c) The political subdivision shall repay its plumbing assistance loan from the money it receives as repayment of plumbing improvement loans it has made. To the extent the political subdivision is unable to collect the payments on its plumbing improvement loans made from the proceeds of a plumbing assistance loan, the political subdivision is not obligated to repay a plumbing

assistance loan.

(d) A political subdivision shall use all reasonable means to collect payments on plumbing improvement loans. The board may bring a mandamus action in a district court in Travis County or may use any other legal means to compel a political subdivision to take action to collect plumbing improvement loan payments.

Added by Acts 1991, 72nd Leg., ch. 294, Sec. 6, eff. June 7, 1991.

Sec. 15.737. RULES. The board may adopt rules necessary to carry out this subchapter.

Added by Acts 1991, 72nd Leg., ch. 294, Sec. 6, eff. June 7, 1991.

SUBCHAPTER M. HYDROGRAPHIC SURVEY PROGRAM

Sec. 15.801. DEFINITIONS. In this subchapter:

(1) "Account" means the hydrographic survey account established under Section 15.802 of this code.

(2) "Program" means the hydrographic survey program established under this subchapter.

(3) "Survey" means a hydrographic survey performed by the board under Section 15.804 of this code.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.062, eff. Aug. 12, 1991.

Sec. 15.802. HYDROGRAPHIC SURVEY ACCOUNT. The hydrographic survey account is created as a special account in the water assistance fund and is composed of:

(1) money appropriated to the board for the program;

(2) fees collected by the board under this subchapter;

(3) money transferred to the account from the water assistance fund under Section 15.011(b) of this code; and

(4) interest earned on the investment of money in the account.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.062, eff. Aug. 12, 1991.

Sec. 15.803. USE OF ACCOUNT. Money in the account may be used only to pay the costs of surveys, the costs of insurance for watercraft and capital equipment, and the costs of capital equipment and personnel necessary to administer the program.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.062, eff. Aug. 12, 1991. Amended by Acts 1993, 73rd Leg., ch. 477, Sec. 7, eff. Aug. 30, 1993.

Sec. 15.804. HYDROGRAPHIC SURVEYS. (a) On the request of a political subdivision or agency of this state or a neighboring state or a federal agency, the board may perform a hydrographic survey in this state or outside of this state if the information collected will benefit this state. The board may perform a survey under this section:

(1) to determine:

(A) reservoir storage capacity;

(B) sedimentation levels;

(C) rates of sedimentation;

(D) projected water supply availability; or

(E) potential mitigative measures;

(2) to conduct other bathymetric studies; or

(3) to collect information relating to water-bearing formations.

(b) The board by rule shall prescribe fees for surveys performed under this section in an amount adequate to pay the necessary and reasonable costs of the program.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.062, eff. Aug. 12, 1991. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 21, eff. Sept. 1, 2001.

Sec. 15.805. RULES. The board may adopt any rules reasonably necessary to administer the program.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.062, eff. Aug. 12, 1991.

SUBCHAPTER N. AQUATIC VEGETATION MANAGEMENT FUND

Sec. 15.851. DEFINITIONS. In this subchapter:

(1) "Approved local plan" means a local plan authorized by Section 11.083, Parks and Wildlife Code, that has been approved by the Parks and Wildlife Commission, the Texas Natural Resource Conservation Commission, and the Department of Agriculture as required by Section 11.083, Parks and Wildlife Code.

(2) Notwithstanding Section 15.001, "fund" means the aquatic vegetation management fund established under this subchapter.

(3) Notwithstanding Section 15.001, "political subdivision" means a municipality, a county, a water district, or a state agency.

(4) "Water district" means a conservation and reclamation district or an authority created under authority of Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution, that has jurisdiction over a public body of surface water. The term does not include a navigation district or a port authority.

Added by Acts 1999, 76th Leg., ch. 1461, Sec. 2, eff. Sept. 1, 1999.

Sec. 15.852. CREATION OF FUND. (a) The aquatic vegetation management fund is a special account in the water assistance fund.

(b) The fund consists of:

(1) money appropriated to the board for the program established under this subchapter and Subchapter G, Chapter 11, Parks and Wildlife Code;

(2) money transferred by the board from other accounts in the water assistance fund under Section 15.011(b); and

(3) interest earned on the investment of money in the fund.

Added by Acts 1999, 76th Leg., ch. 1461, Sec. 2, eff. Sept. 1, 1999.

Sec. 15.853. USE OF FUND. (a) Money in the fund may be used only for the following purposes, in the following order of priority:

(1) grants to the Parks and Wildlife Department:

(A) to develop a state aquatic vegetation management plan in coordination with the Texas Natural Resource Conservation Commission, the Department of Agriculture, water districts and other

political subdivisions with jurisdiction over public bodies of surface water, and public drinking water providers, as required by Section 11.082, Parks and Wildlife Code; or

(B) for research, outreach, and educational activities that relate to vegetation control;

(2) grants to political subdivisions to develop local aquatic vegetation management plans that conform to the state aquatic vegetation management plan, as authorized by Section 11.083, Parks and Wildlife Code; and

(3) grants to political subdivisions to manage aquatic vegetation infestations under the state plan or the approved local plan adopted by the political subdivision.

(b) The amount of funding for the purposes authorized by Subsection (a) may not exceed amounts equal to the following percentages of any biennial appropriation to the board for use under this subchapter:

(1) 30 percent, for purposes authorized by Subsection (a)(1); and

(2) 70 percent, for purposes authorized by Subsections (a)(2) and (3), of which not more than 35 percent may be used for purposes authorized by Subsection (a)(3) using chemical treatments.

Added by Acts 1999, 76th Leg., ch. 1461, Sec. 2, eff. Sept. 1, 1999.

Sec. 15.854. RULES. The board shall adopt rules necessary to administer this subchapter, including rules establishing procedures for application for and award of grants, distribution of grants, and administration of grants and the grant program established under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1461, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER O. PROGRAM FOR WATER AND WASTEWATER FINANCIAL ASSISTANCE FOR DISADVANTAGED RURAL COMMUNITIES

Sec. 15.901. DEFINITIONS. In this subchapter:

(1) "Fund" means the disadvantaged rural community water and wastewater financial assistance fund.

(2) Repealed by Acts 2005, 79th Leg., Ch. 1151, Sec. 17(1), eff. June 18, 2005.

(3) "Rural community" means:

(A) a municipality or county with a population of less than 5,000;

(B) any portion of a political subdivision with a service population of less than 5,000 that is located outside the boundaries or extraterritorial jurisdiction of a municipality; or

(C) a predominately residential area with a population of less than 5,000 that is located outside the corporate boundaries of a municipality.

(4) "Disadvantaged rural community" means a rural community with a median household income that is not greater than 75 percent of the median state household income for the most recent year for which the applicable statistics are available.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 2, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 17(1), eff. June 18, 2005.

Sec. 15.902. DISADVANTAGED RURAL COMMUNITY WATER AND WASTEWATER FINANCIAL ASSISTANCE FUND. (a) The disadvantaged rural community water and wastewater financial assistance fund is an account in the water assistance fund.

(b) The fund consists of:

(1) money transferred to the fund from the water assistance fund under Section 15.011(b);

(2) proceeds from the sale of political subdivision bonds by the board to the Texas Water Resources Finance Authority as provided by Section 17.0871; and

(3) repayments of loans made from the fund.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 3, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 4, eff. June 18, 2005.

Sec. 15.903. FINANCIAL ASSISTANCE. (a) The fund may be used by the board to provide grants or loans of financial assistance to political subdivisions or water supply corporations for the construction, acquisition, or improvement of water and wastewater projects to provide service to disadvantaged rural communities.

(b) The board may make financial assistance available to a political subdivision or water supply corporation by entering into a grant agreement or a loan agreement and promissory note with the subdivision or corporation, as provided by this subchapter. A political subdivision or water supply corporation may apply for and accept the financial assistance.

(c) The loan agreement must provide for the payment of principal and interest on the debt incurred for the project at a rate to be determined by the board.

(d) The loan agreement must provide for the issuance of a promissory note payable to the board to evidence the obligation of the political subdivision or water supply corporation to repay the loan made in accordance with the terms of the loan agreement.

(e) Repealed by Acts 2005, 79th Leg., Ch. 1151, Sec. 17(2), eff. June 18, 2005.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 608, Sec. 2, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 5, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 17(2), eff. June 18, 2005.

Sec. 15.904. USE OF SALES TAX AS LOAN SECURITY. (a) A political subdivision or water supply corporation may pledge a percentage of its revenue to the payment of debt incurred under a loan agreement entered into with the board under this subchapter. A municipality or county may pledge a percentage of the sales and use tax revenue received under Chapter 321 or 323, Tax Code, as applicable, to the payment of debt incurred under a loan agreement entered into with the board under this subchapter if a majority of the voters voting at an election called and held for that purpose authorize the municipality or county to pledge a portion of that

revenue for that purpose.

(b) Sections 321.506, 321.507, and 323.505, Tax Code, do not apply to taxes pledged under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 6, eff. June 18, 2005.

Sec. 15.905. REVIEW AND APPROVAL OF LOAN AGREEMENT BY ATTORNEY GENERAL. (a) Before a loan agreement may become effective, a record of the proceedings of the board and the political subdivision or water supply corporation authorizing the execution of the loan agreement, the loan agreement, the promissory note, and any contract providing revenue or security to pay the promissory note must be submitted to the attorney general for review and approval.

(b) If the attorney general finds that the loan agreement and the promissory note are valid and binding obligations of the political subdivision or water supply corporation, the attorney general shall approve the documents and deliver them to the comptroller, the board, and the subdivision or corporation, together with a copy of the attorney general's legal opinion stating that approval.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 7, eff. June 18, 2005.

Sec. 15.906. REGISTRATION. On receipt of the documents required by Section 15.905(b), the comptroller shall register the record of the proceedings relating to the execution of a loan agreement.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.

Sec. 15.907. VALIDITY AND INCONTESTABILITY. On approval by the attorney general and registration by the comptroller, the loan

agreement, the promissory note, a contract providing revenue or security, and any other obligation evidencing the debt are incontestable in a court and are valid, binding, and enforceable according to their terms.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.

Sec. 15.909. RULES. The board shall adopt necessary rules to administer this subchapter, including rules establishing procedures for application for and award of loans or grants.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 8, eff. June 18, 2005.

Sec. 15.910. APPLICATION FOR ASSISTANCE. (a) In an application to the board for financial assistance from the fund, a political subdivision or water supply corporation must include:

(1) its name and its principal officers;

(2) a citation of the law under which the subdivision or corporation operates and was created;

(3) a description of the water or wastewater project for which the financial assistance will be used;

(4) the total cost of the project;

(5) the amount of state financial assistance requested;

(6) the plan for repaying any loan provided by the board for the project;

(7) the water conservation plan required by Section 16.4021; and

(8) any other information the board requires in order to perform its duties and to protect the public interest.

(b) The board may not accept an application for a loan or grant of financial assistance from the fund unless it is submitted in affidavit form by the officials of the political subdivision or water supply corporation. The board shall prescribe the affidavit form in its rules.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(4), eff. September 1, 2019.

(d) In an application to the board for financial assistance from the fund, a political subdivision or water supply corporation shall include household surveys for the disadvantaged rural community to be served by the project that are acceptable to the board and contain information adequate to establish:

(1) the median household income of the disadvantaged rural community; and

(2) the level of community support for the project.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 9, eff. June 18, 2005.

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 5, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(4), eff. September 1, 2019.

Sec. 15.911. FINDINGS REGARDING PERMITS. (a) The board may not release funds for the construction phase of that portion of a project that proposes surface water or groundwater development until the executive administrator makes a written finding:

(1) that the political subdivision or water supply corporation proposing surface water development has the necessary water right authorizing it to appropriate and use the water that the project will provide; or

(2) that the subdivision or corporation proposing groundwater development has the right to use water that the project will provide.

(b) If the political subdivision or water supply corporation includes a proposal for a wastewater treatment project, the board may not release funds for the project construction until the subdivision or corporation has received a permit for the construction and operation of the project and approval of the plans and specifications for the project in a manner that will satisfy commission requirements for design criteria and permit conditions that apply to construction activities.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 10, eff. June 18, 2005.

Sec. 15.912. CONSIDERATIONS IN ACTING ON APPLICATION. (a) In acting on an application for financial assistance, the board shall consider:

(1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;

(2) the availability of revenue to the political subdivision or water supply corporation from all sources for any necessary repayment of the cost of the project, including all interest;

(3) the relationship of the project to overall statewide needs; and

(4) any other factors that the board considers relevant.

(b) The board may not accept an application for a loan or grant of financial assistance from the fund for a project recommended through the state and regional water planning processes under Sections 16.051 and 16.053 if the applicant has failed to satisfactorily complete a request by the executive administrator or a regional planning group for information relevant to the project, including a water infrastructure financing survey under Section 16.053(q).

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 11, eff. June 18, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 891 (S.B. 370), Sec. 2, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 983 (H.B. 1732), Sec. 2, eff. September 1, 2011.

Sec. 15.913. APPROVAL OF APPLICATION. The board by resolution may approve an application for a loan or grant if, after considering the factors listed in Section 15.912 and any other relevant factors,

the board finds that:

(1) the public interest requires state participation in the project; and

(2) the revenue or taxes pledged by the political subdivision or water supply corporation will be sufficient to meet all the obligations assumed by the subdivision or corporation during the period of any loan provided by the board.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 12, eff. June 18, 2005.

Sec. 15.914. CONSTRUCTION CONTRACT REQUIREMENTS. A political subdivision or water supply corporation receiving financial assistance under this subchapter shall require in all contracts for the construction of a project that:

(1) each bidder furnish a bid guarantee equivalent to five percent of the bid price;

(2) each contractor awarded a construction contract furnish performance and payment bonds as follows:

(A) the performance bond must include guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices; and

(B) the performance and payment bonds must be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year after the date of approval by the engineer of the subdivision or corporation;

(3) payment be made in partial payments as the work progresses;

(4) each partial payment not exceed 95 percent of the amount due at the time of the payment as shown by the engineer of the project, but, if the project is substantially complete, a partial release of the five percent retainage may be made by the subdivision or corporation with approval of the executive administrator;

(5) payment of the retainage remaining due on completion of the contract be made only after:

(A) approval by the engineer for the subdivision or

corporation as required under the bond proceedings;

(B) approval by the subdivision or corporation by a resolution or other formal action; and

(C) certification by the executive administrator in accordance with the rules of the board that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with sound engineering principles and practices;

(6) no valid approval be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications; and

(7) labor from inside the disadvantaged rural community be used to the extent possible.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 13, eff. June 18, 2005.

Sec. 15.915. FILING CONSTRUCTION CONTRACT. The political subdivision or water supply corporation shall file with the board a certified copy of each construction contract it enters into for the construction of all or part of a project. Each contract must contain or have attached to it the specifications, plans, and details of all work included in the contract.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 14, eff. June 18, 2005.

Sec. 15.916. INSPECTION OF PROJECTS. (a) The board may inspect the construction of a project at any time to assure that:

(1) the contractor is substantially complying with the approved engineering plans of the project; and

(2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the board does not subject the state to any civil liability.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.

Sec. 15.917. ALTERATION OF PLANS. After the executive administrator approves the engineering plans, a political subdivision or water supply corporation may not make any substantial or material alteration in the plans unless the executive administrator authorizes the alteration. The executive administrator shall review and approve or disapprove plans and specifications for all sewage collection, treatment, and disposal systems for which financial assistance is provided from the fund in a manner that will satisfy commission requirements for design criteria and permit conditions that apply to construction activities.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 15, eff. June 18, 2005.

Sec. 15.918. CERTIFICATE OF APPROVAL. The executive administrator may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the project according to the approved plans;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any term of the contract.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.

Sec. 15.920. AUTHORITY OF POLITICAL SUBDIVISIONS OR WATER SUPPLY CORPORATIONS. Political subdivisions or water supply corporations that receive financial assistance from the fund are granted all necessary authority to enter into grant agreements or loan agreements and issue promissory notes in connection with the financial assistance granted under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 22, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1151 (H.B. 3029), Sec. 16, eff. June 18, 2005.

SUBCHAPTER P. COLONIA SELF-HELP PROGRAM

Sec. 15.951. DEFINITIONS. In this subchapter:

(1) "Account" means the colonia self-help account.

(2) "Colonia" means a geographic area that:

(A) is an economically distressed area as defined by Section 17.921;

(B) is located in a county any part of which is within 50 miles of an international border; and

(C) consists of at least 11 dwellings, or of at least a lower number of dwellings as specified by the board for which the board determines that a self-help project will be cost-effective, that are located in close proximity to each other in an area that may be described as a community or neighborhood.

(2-a) "Nonprofit organization" means an organization qualifying for an exemption from federal income taxes under Section 501(c)(3), Internal Revenue Code of 1986.

(2-b) "Political subdivision" has the meaning assigned by Section 17.921.

(3) "Program" means the colonia self-help program established under this subchapter.

(4) "Retail public utility" has the meaning assigned by Section 13.002.

(5) "Self-help project" means a project in which the people who will benefit from the project actively participate.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 23, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 341 (S.B. 99), Sec. 15, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 60 (S.B. 1371), Sec. 1, eff. September 1, 2009.

Sec. 15.952. CREATION OF ACCOUNT. (a) The colonia self-help account is an account in the water assistance fund that may be used by the board only for the purposes of this subchapter.

(b) The account consists of:

(1) money transferred by the legislature directly to the account;

(2) money transferred at the board's discretion from the fund; and

(3) gifts, grants, or donations to the account.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the account.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 23, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 608, Sec. 6, eff. June 20, 2003.

Sec. 15.953. USE OF ACCOUNT. (a) The board may use funds in the account to reimburse a political subdivision or a nonprofit organization for eligible expenses incurred in a self-help project that results in the provision of adequate water or wastewater services to a colonia. Eligible expenses under this subsection include:

(1) construction expenses;

(2) facility planning expenses;

(3) platting expenses;

(4) surveying expenses;

(5) engineering expenses;

(6) equipment expenses; and

(7) other expenses necessary to provide water or wastewater services to the colonia, as determined appropriate by the board.

(b) The board may award a grant under the program directly to a political subdivision or nonprofit organization to reimburse the subdivision or organization for expenses incurred in a self-help project described by Subsection (a). If the board determines that a retail public utility described by Section 15.955(8) has made a commitment to the self-help project sufficient to ensure that retail water or wastewater service will be extended to the colonia, the board may make an advance of grant funds. An advance under this subsection is subject to the terms determined by the board and may not exceed 10 percent of the total amount of the grant.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 23, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 60 (S.B. 1371), Sec. 2, eff.

September 1, 2009.

Sec. 15.954. ELIGIBLE POLITICAL SUBDIVISIONS AND NONPROFIT ORGANIZATIONS. To be eligible to receive a grant under the program, a political subdivision or a nonprofit organization must:

(1) demonstrate work experience relevant to extending retail water or wastewater utility service to colonias in coordination with retail public utilities; and

(2) develop a plan that requires self-help project beneficiaries to actively participate in the implementation of the project, in coordination with a retail public utility described by Section 15.955(8).

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 23, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 60 (S.B. 1371), Sec. 3, eff. September 1, 2009.

Sec. 15.955. GRANT APPLICATION. An eligible political subdivision or nonprofit organization must apply to the board for a grant under the program before incurring any expense associated with a self-help project described by Section 15.953(a). The application must include:

(1) the name of the political subdivision or nonprofit organization, the names of the political subdivision's authorized representative or the nonprofit organization's principal officers, and verification of the nonprofit organization's 501(c)(3) status;

(2) a description of the project area, the anticipated number of water and wastewater connections to be made, and the anticipated number of colonia residents to be served;

(3) a description of the existing water and wastewater facilities in the colonia;

(4) a description of the project and the aspect of the project for which the grant will be used;

(5) a description of the anticipated participation in the project by residents of the colonia;

(6) the estimated total cost of both the project and the aspect of the project for which the grant will be used;

(7) the amount of the grant that is requested from the account and the sources of funding for the entire project;

(8) from a retail public utility authorized to provide water or wastewater services to the colonia, a resolution in which the retail public utility:

(A) agrees to inspect the project during and after construction to ensure the adequacy of the project; and

(B) commits to provide the water or wastewater services that the project intends to use; and

(9) any other information required by the board.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 23, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 60 (S.B. 1371), Sec. 4, eff. September 1, 2009.

Sec. 15.956. BOARD CONSIDERATIONS IN EVALUATING GRANT APPLICATION. In evaluating an application for a grant under the program, the board shall consider:

(1) the number of colonia residents to be served by the self-help project;

(2) the capability of the political subdivision or nonprofit organization to complete the self-help project in a timely manner;

(3) the quality of any projects previously completed by the applicant; and

(4) the commitment demonstrated by the retail public utility to provide water or wastewater services to the colonia on completion of the project.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 23, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 60 (S.B. 1371), Sec. 5, eff. September 1, 2009.

Sec. 15.957. ACTION ON GRANT APPLICATION. (a) Not later than the 60th day after the date the board receives a complete application for a grant under the program, the board by written resolution shall:

(1) approve the application; or

(2) disapprove the application.

(b) On approval of an application, the board shall authorize the executive administrator of the board to execute a contract with the applicant for a grant to reimburse eligible expenses. The contract may provide a budget, schedule, terms for payment of funds, and any other terms the board or its executive administrator considers appropriate.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 23, eff. Sept. 1, 2001.

Sec. 15.958. RULES. The board shall adopt rules necessary to administer the program established under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 23, eff. Sept. 1, 2001.

SUBCHAPTER Q. WATER INFRASTRUCTURE FUND

Sec. 15.971. DEFINITIONS. In this subchapter:

(1) "Eligible political subdivision" means a city, county, district, or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, including a groundwater district with a groundwater management plan certified by the board under Section 36.1072, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Chapter 67.

(2) "Fund" means the water infrastructure fund.

(3) "Metropolitan statistical area" means an area so designated by the United States Office of Management and Budget.

(4) "Political subdivision bonds" means bonds or other obligations issued by a political subdivision to fund a project and purchased by the board from money in the fund.

(5) "Project" means any undertaking or work, including planning and design activities and work to obtain regulatory authority, to conserve, mitigate, convey, and develop water resources of the state, including any undertaking or work done outside the state that the board determines will result in water being available for use in or for the benefit of the state.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.01, eff. Sept. 1,

2001. Renumbered from Water Code Sec. 15.901 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(142), eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 574 (S.B. 2312), Sec. 1, eff. September 1, 2009.

Sec. 15.972. FINDINGS. The legislature finds that:

(1) the creation of the fund and the administration of the fund by the board will encourage the conservation and development of the water resources of the state;

(2) the use of the fund is in furtherance of the public purpose of conserving and developing the water resources of the state; and

(3) the use of the fund for the purposes provided by this subchapter is for the benefit of both the state and the political subdivisions to which the board makes financial assistance available in accordance with this subchapter and constitutes a program under, and is in furtherance of the public purposes set forth in, Section 52-a, Article III, Texas Constitution.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.01, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 15.902 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(142), eff. Sept. 1, 2003.

Sec. 15.973. WATER INFRASTRUCTURE FUND. (a) The water infrastructure fund is a special fund in the state treasury to be administered by the board under this subchapter and rules adopted by the board under this subchapter. Money in the fund may be used to pay for the implementation of water projects recommended through the state and regional water planning processes under Sections 16.051 and 16.053.

(b) The fund consists of:

(1) appropriations from the legislature;

(2) any other fees or sources of revenue that the legislature may dedicate for deposit to the fund;

(3) repayments of loans made from the fund;

(4) interest earned on money credited to the fund;

(5) depository interest allocable to the fund;

(6) money from gifts, grants, or donations to the fund;

(7) money from revenue bonds or other sources designated by the board;

(8) proceeds from the sale of political subdivision bonds or obligations held in the fund and not otherwise pledged to the discharge, repayment, or redemption of revenue bonds or other bonds, the proceeds of which were placed in the fund; and

(9) money disbursed to the fund from the state water implementation fund for Texas as authorized by Section 15.434.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 608, Sec. 1, eff. June 20, 2003. Renumbered from Water Code Sec. 15.903 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(142), eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.03, eff. November 5, 2013.

Sec. 15.974. USE OF WATER INFRASTRUCTURE FUND. (a) The board may use the fund:

(1) to make loans to political subdivisions at or below market interest rates for projects;

(2) to make grants, low-interest loans, or zero interest loans to political subdivisions for projects to serve areas outside metropolitan statistical areas in order to ensure that the projects are implemented, or for projects to serve economically distressed areas;

(3) to make loans at or below market interest rates for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a project;

(4) as a source of revenue or security for the payment of principal and interest on bonds issued by the board if the proceeds of the sale of the bonds will be deposited in the fund; and

(5) to pay the necessary and reasonable expenses of the board in administering the fund.

(b) The board shall transfer back to the state water implementation fund for Texas any money disbursed to the fund as described by Section 15.973(b)(9) if the requirements of Section

15.435 are satisfied.

(c) Principal and interest payments on loans made under Subsection (a)(3) may be deferred for a maximum of 10 years or until construction of the project is completed, whichever is earlier.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.01, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 15.904 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(142), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 302 (S.B. 509), Sec. 1, eff. June 17, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.04, eff. November 5, 2013.

Sec. 15.975. APPROVAL OF APPLICATIONS. (a) On review and recommendation by the executive administrator, the board by resolution may approve an application if the board finds that:

(1) the application and the assistance applied for meet the requirements of this subchapter, Section 16.4021, and board rules;

(2) the revenue or taxes, or both the revenue and taxes, pledged by the applicant will be sufficient to meet all the obligations assumed by the political subdivision; and

(3) the project will meet water needs in a manner consistent with the state and regional water plans as required by Section 16.053(j), unless otherwise specified by an act of the legislature.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(5), eff. September 1, 2019.

(c) The board may deliver funds for the part of a loan or grant for a project relating to surface water development, other than for planning and design costs, permitting costs, and other costs associated with federal and state regulatory activities with respect to a project, only if the executive administrator makes a written finding that the applicant:

(1) has the necessary water rights authorizing the applicant to appropriate and use the water that the project will provide, if the applicant is proposing surface water development; or

(2) has the right to use water that the project will provide, if the applicant is proposing groundwater development.

(d) The board may not approve an application if the applicant has failed to satisfactorily complete a request by the executive administrator or a regional planning group for information relevant to the project, including a water infrastructure financing survey under Section 16.053(q).

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.01, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 15.905 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(142), eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 891 (S.B. 370), Sec. 1, eff. June 17, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 983 (H.B. 1732), Sec. 1, eff. September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 6, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(5), eff. September 1, 2019.

Sec. 15.9751. PRIORITY FOR WATER CONSERVATION. The board shall give priority to applications for funds for the implementation of water supply projects in the state water plan by entities that:
(1) have already demonstrated significant water conservation savings; or
(2) will achieve significant water conservation savings by implementing the proposed project for which the financial assistance is sought.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.11, eff. September 1, 2007.

Sec. 15.976. APPLICABLE LAW. Subchapter E, Chapter 17, applies to financial assistance made available from the fund, except that the board may also execute contracts as necessary to evidence grant agreements.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.01, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 15.906 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(142), eff. Sept. 1, 2003.

Sec. 15.977. RULES. The board shall adopt rules necessary to carry out this subchapter, including rules establishing procedures for application for and for the award of financial assistance, for the investment of funds, and for the administration of the fund.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.01, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 15.907 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(142), eff. Sept. 1, 2003.

Sec. 15.978. SALE OF POLITICAL SUBDIVISION BONDS. (a) The board may sell or dispose of political subdivision bonds at the price and under the terms that the board determines to be reasonable.

(b) The board may sell political subdivision bonds without making a previous offer to the political subdivision that issued the bonds and without advertising, soliciting, or receiving bids for sale.

(c) Notwithstanding other provisions of this chapter, the board may sell to the Texas Water Resources Finance Authority or to the state water implementation revenue fund for Texas any political subdivision bonds purchased with money in the water infrastructure fund and may apply the proceeds of a sale in the manner provided by this section.

(d) Proceeds from the sale of political subdivision bonds under this section shall be deposited in the fund for use as provided by Section 15.974.

(e) As part of a sales agreement with the Texas Water Resources Finance Authority, the board by contract may agree to perform the functions required to ensure that the political subdivision pays the debt service on political subdivision bonds sold and observes the conditions and requirements stated in those bonds.

(f) The board may exercise any powers necessary to carry out the authority granted by this section, including the authority to contract with any person to accomplish the purposes of this section.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.01, eff. Sept. 1, 2001. Renumbered from Water Code, Sec. 15.908 and amended by Acts 2003, 78th Leg., ch. 1275, Sec. 2(142), 3(42), eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.05, eff. November 5, 2013.

Sec. 15.979. FUNDING FOR LOCAL ECONOMIC DEVELOPMENT. (a) The board may use the fund to provide financial assistance to an eligible political subdivision to enable the political subdivision to fund loans and grants for projects that conserve and develop the water resources of the political subdivision for the ultimate benefit of the public, and that develop and diversify its local economy, consistent with the terms and conditions set forth in a program adopted by the governing body of the political subdivision under authority granted by Section 15.980.

(b) The board may not purchase political subdivision bonds issued for the purposes described by Subsection (a) that are secured in whole or in part by a pledge of ad valorem taxes unless the political subdivision submits evidence satisfactory to the board that the issuance of the bonds has been approved by the citizens of the political subdivision voting at an election held for the purposes described in Section 15.980.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.01, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 15.909 and amended by Acts 2003, 78th Leg., ch. 1275, Sec. 2(142), 3(43), eff. Sept. 1, 2003.

Sec. 15.980. AUTHORITY TO ESTABLISH ECONOMIC DEVELOPMENT PROGRAMS. (a) An eligible political subdivision may establish economic development programs and make loans and grants of public funds to assist in providing projects within the political subdivision that conserve and develop the water resources of the political subdivision for the ultimate benefit of the public. The authority granted to a political subdivision to make loans and grants in accordance with this section constitutes a program in furtherance of the public purposes provided by Section 52-a, Article III, Texas Constitution.

(b) Financial assistance received from the fund may be used by an eligible political subdivision to make loans or grants to persons for projects that the political subdivision finds will conserve and develop the water resources of the political subdivision for the

ultimate benefit of the public and assist in diversifying and developing the economy of the political subdivision and the state.

(c) In exercising the authority granted by this section, the governing body of an eligible political subdivision may determine the terms and conditions governing the loan or grant of money and determine whether to approve an agreement with a person who receives a loan or grant.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.01, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 15.910 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(142), eff. Sept. 1, 2003.

Sec. 15.981. CERTAIN OBLIGATIONS RESTRICTED. An eligible political subdivision may not sell or incur obligations to fund an economic development program established under authority granted by Section 15.980 that are payable in whole or in part from ad valorem taxes unless the residents of the political subdivision, voting at an election held for the purpose, approve the issuance of obligations to fund an economic development program for the provision of loans or grants to persons to construct projects that will conserve and develop the water resources of the political subdivision for the ultimate benefit of the public and assist in developing and diversifying the local economy.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.01, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 15.911 and amended by Acts 2003, 78th Leg., ch. 1275, Sec. 2(142), 3(44), eff. Sept. 1, 2003.

SUBCHAPTER R. RURAL WATER ASSISTANCE FUND

Sec. 15.991. PURPOSE. The legislature finds that the rural areas of the state, characterized by small populations extended over disproportionately large service areas, require a means of financing water and water quality enhancement projects in addition to those established by other provisions of this chapter.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.02, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 608, Sec. 3, eff. June 20, 2003. Renumbered from Water Code Sec. 15.951 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(143), eff. Sept. 1, 2003.

Sec. 15.992. DEFINITIONS. In this subchapter:

(1) "District" means a conservation or reclamation district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(2) "Federal agency" means an agency or other entity of the United States, including the United States Department of Agriculture or an agency or entity that is acting through or on behalf of that department.

(3) "Fund" means the rural water assistance fund.

(3-a) "Nonprofit water supply or sewer service corporation" means a corporation operating under Chapter 67.

(4) "Rural political subdivision" means:

(A) a nonprofit water supply or sewer service corporation, district, or municipality with a service area of 10,000 or less in population or that otherwise qualifies for financing from a federal agency; or

(B) a county in which no urban area exceeds 50,000 in population.

(5) "State agency" means an agency or other entity of the state, including the Department of Agriculture and the Texas Department of Housing and Community Affairs and any agency or authority that is acting through or on behalf of the Department of Agriculture or the Texas Department of Housing and Community Affairs.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.02, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 15.952 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(143), eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 64 (S.B. 360), Sec. 1, eff. September 1, 2011.

Sec. 15.993. FUND. The rural water assistance fund is a special fund in the state treasury. The fund consists of:

(1) money directly appropriated to the board for a purpose of the fund;

(2) repayment of principal and interest from loans made from the fund not otherwise needed as a source of revenue pursuant to

Section 17.9615(b);

(3) money transferred by the board from any sources available;

(4) interest earned on the investment of money in the fund and depository interest allocable to the fund;

(5) money transferred to the fund from the water assistance fund in accordance with Section 15.011(b), including proceeds from the sale of political subdivision bonds by the board to the Texas Water Resources Finance Authority that are deposited in the water assistance fund as provided by Section 17.0871;

(6) money from gifts, grants, or donations to the fund;

(7) money disbursed to the fund from the state water implementation fund for Texas as authorized by Section 15.434; and

(8) any other fees or sources of revenue that the legislature may dedicate for deposit to the fund.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.02, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 608, Sec. 4, eff. June 20, 2003. Renumbered from Water Code Sec. 15.953 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(143), eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 64 (S.B. 360), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.06, eff. November 5, 2013.

Sec. 15.994. USE OF FUND. (a) The fund may be used to provide low-interest loans to rural political subdivisions for:

(1) water or water-related projects and for water quality enhancement projects, including:

(A) the construction of infrastructure facilities for wholesale or retail water or sewer service;

(B) desalination projects;

(C) the purchase or lease of water well fields;

(D) property necessary for water well fields;

(E) the purchase or lease of rights to produce groundwater;

(F) onsite or wetland wastewater treatment facilities; and

(G) the interim financing of construction projects;

(2) water projects included in the state water plan or a regional water plan;

(3) development of groundwater sources and acquisition of water rights, including groundwater and surface water rights;

(4) the acquisition of retail public utilities as defined by Section 13.002;

(5) the acquisition of water supply or sewer service facilities or systems owned by municipalities or other political subdivisions;

(6) construction, acquisition, or improvement of water and wastewater projects to provide service to an economically distressed area;

(7) planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a project; and

(8) obtaining water or wastewater service supplied by other political subdivisions or financing the consolidation or regionalizing of neighboring political subdivisions, or both.

(b) The fund may be used to provide zero interest loans, negative interest loans, loan forgiveness, or grants for any purpose described by Subsection (a) under criteria developed by the board.

(c) The board may use money in the fund to contract for outreach, financial, planning, and technical assistance to assist rural political subdivisions in obtaining and using financing from any source for a purpose described by this section.

(d) The fund may be used to buy down interest rates on loans.

(e) A rural political subdivision may enter into an agreement with a federal agency, a state agency, or another rural political subdivision to submit a joint application for financial assistance under this subchapter.

(f) A nonprofit water supply or sewer service corporation is exempt from payment of any sales tax that may be incurred under other law or ordinance for any project financed by the fund.

(g) The fund may be used as a source of revenue for the payment of principal and interest on water financial assistance bonds issued by the board if the proceeds of the sale of these bonds will be deposited into the rural water assistance fund.

(h) The board may coordinate its review of an application submitted under this subchapter with a federal agency to avoid

duplication of efforts and costs.

(i) The board shall transfer back to the state water implementation fund for Texas any money disbursed to the fund as described by Section 15.993(7) if the requirements of Section 15.435 are satisfied.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.02, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 608, Sec. 5, eff. June 20, 2003. Renumbered from Water Code Sec. 15.954 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(143), eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 64 (S.B. 360), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.07, eff. November 5, 2013.

Acts 2017, 85th Leg., R.S., Ch. 118 (H.B. 544), Sec. 1, eff. May 26, 2017.

Sec. 15.995. FINANCIAL ASSISTANCE IN GENERAL. (a) The board shall adopt rules necessary to administer this subchapter, including rules establishing procedures for the application for and award of loans, the distribution of loans, the investment of funds, and the administration of loans and the fund.

(b) The board may not release from the fund money for the construction phase of parts of projects proposing surface water or groundwater development until the executive administrator makes a written finding that a rural political subdivision:

(1) has the necessary water right authorizing it to appropriate and use the water that the project will provide, if the rural political subdivision is proposing surface water development; or

(2) has the right to use water that the project will provide, if the rural political subdivision is proposing groundwater development.

(c) In passing on an application from a rural political subdivision for financial assistance, the board shall consider:

(1) the needs of the area to be served by the project, the benefit of the project to the area, the relationship of the project to the overall state water needs, and the relationship of the project

to the state water plan; and

(2) the availability of revenue to the rural political subdivision from all sources for the ultimate repayment of the cost of the water supply project, including all interest.

(d) The board by resolution may approve an application if, after considering the factors listed in Subsection (c) and other relevant factors, the board finds that:

(1) the public interest is served by state assistance for the project; and

(2) the revenue or taxes pledged by the rural political subdivision will be sufficient to meet all the obligations assumed by the rural political subdivision during the succeeding period of not more than 50 years.

(e) An application from a rural political subdivision for financial assistance under this subchapter must comply with the requirements of Section 16.4021.

(f) Sections 17.183-17.187 apply to the construction of projects funded pursuant to this subchapter.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.02, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 15.955 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(143), eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 64 (S.B. 360), Sec. 4, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 7, eff. September 1, 2019.

Sec. 15.996. LOANS TO NONPROFIT WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a) In addition to any other method of providing financial assistance authorized by this subchapter, the board may make financial assistance available to an applicant that is a nonprofit water supply or sewer service corporation by entering into a loan agreement with the applicant.

(b) To be eligible to receive financial assistance under this section, the applicant must:

(1) execute a promissory note for the full amount of the loan; and

(2) provide to the board an attorney's opinion stating that

the applicant has the authority to incur the debt.

(c) An applicant for financial assistance under this section is not required to appoint or employ:

(1) a bond counsel; or

(2) a financial advisor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 64 (S.B. 360), Sec. 5, eff. September 1, 2011.

CHAPTER 16. PROVISIONS GENERALLY APPLICABLE TO WATER DEVELOPMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 16.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Chairman" means the chairman of the Texas Water Development Board.

(4) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(5) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(6) "Development fund manager" means the development fund manager of the Texas Water Development Board.

(7) "Political subdivision" means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party and any nonprofit water supply corporation created and operating under Chapter 67.

(8) "Bonds" means all Texas Water Development Bonds now or hereafter authorized by the Texas Constitution.

(9) "Waste" has the same meaning as provided in Section 26.001 of this code.

(10) "Water development bonds" means the Texas Water Development Bonds authorized by Article III, Sections 49-c and 49-d, of the Texas Constitution and bonds dedicated to use for the purposes of those sections under Article III, Sections 49-d-2, 49-d-6, and 49-d-7, of the Texas Constitution.

(11) "State facility" means a project in which the board

has acquired an ownership interest.

(12) "Acquisition of a state facility" means the act or series of actions by the board in making payment for a state facility.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 2.08, 2.14; Acts 1985, 69th Leg., ch. 795, Sec. 1.044, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 821, Sec. 2, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 7, Sec. 3(1), eff. March 24, 1987; Acts 1987, 70th Leg., ch. 1103, Sec. 9, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 66, Sec. 1; Acts 1989, 71st Leg., ch. 1062, Sec. 1; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.064, eff. Aug. 12, 1991; Acts 1999, 76th Leg., ch. 62, Sec. 18.58, eff. Sept. 1, 1999.

Sec. 16.002. OPEN MEETINGS AND OPEN RECORDS LAWS. Nonprofit water supply corporations which receive any assistance under this chapter are subject to Chapter 551, Government Code, and to Chapter 552, Government Code.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.19. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(78), (90), eff. Sept. 1, 1995.

SUBCHAPTER B. DUTIES OF THE EXECUTIVE ADMINISTRATOR

Sec. 16.011. GENERAL RESPONSIBILITIES OF THE EXECUTIVE ADMINISTRATOR. The executive administrator shall determine the responsibilities of each administrative division of the board and its staff in carrying out the authority, duties, and functions provided in this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.012. STUDIES, INVESTIGATIONS, SURVEYS. (a) The executive administrator shall make studies, investigations, and surveys of the occurrence, quantity, quality, and availability of the surface water and groundwater of this state and shall, in cooperation

with other entities of the state, guide the development of a statewide water resource data collection and dissemination network. For these purposes the executive administrator shall collect, receive, analyze, process, and facilitate access to basic data and summary information concerning water resources of the state and provide guidance regarding data formats and descriptions required to access and understand Texas water resource data.

(b) The executive administrator shall:

(1) determine suitable locations for future water facilities, including reservoir sites;

(2) determine suitable, cost-effective water supply alternatives on a regional basis, including voluntary means of encouraging aggressive water conservation;

(3) locate land best suited for irrigation;

(4) make estimates of the cost of proposed irrigation works and the improvement of reservoir sites;

(5) examine and survey reservoir sites;

(6) monitor the effects of fresh water inflows upon the bays and estuaries of Texas;

(7) monitor instream flows;

(8) lead a statewide effort, in coordination with federal, state, and local governments, institutions of higher education, and other interested parties, to develop a network for collecting and disseminating water resource-related information that is sufficient to support assessment of ambient water conditions statewide;

(9) make recommendations for optimizing the efficiency and effectiveness of water resource data collection and dissemination as necessary to ensure that basic water resource data are maintained and available for Texas; and

(10) make basic data and summary information developed under this subsection accessible to state agencies and other interested persons.

(c) In performing the duties required under Subdivisions (1), (4), (5), (6), and (7) of Subsection (b), the executive administrator shall consider advice from the Parks and Wildlife Department. In addition, the Department of Agriculture may provide advice to the executive administrator, where appropriate, regarding any of the duties to be performed under Subsection (b).

(d) All entities of the state, including institutions of higher education, that collect or use water data or information shall

cooperate with the board in the development of a coordinated, efficient, and effective statewide water resource data collection and dissemination network.

(e) The executive administrator shall keep full and proper records of his work, observations, data, and calculations, all of which are the property of the state.

(f) In performing his duties under this section, the executive administrator shall assist the commission in carrying out the purposes and policies stated in Section 12.014 of this code.

(g) No later than December 31, 1999, the commission shall obtain or develop an updated water availability model for six river basins as determined by the commission. The commission shall obtain or develop an updated water availability model for all remaining river basins no later than December 31, 2001.

(h) Not later than December 31, 2003, the commission shall obtain or develop an updated water supply model for the Rio Grande. Recognizing that the Rio Grande is an international river touching on three states of the United States and five states of the United Mexican States and draining an area larger than the State of Texas, the model shall encompass to the extent practicable the significant water demands within the watershed of the river as well as the unique geology and hydrology of the region. The commission may collect data from all jurisdictions that allocate the waters of the river, including jurisdictions outside this state.

(h-1) Not later than December 1, 2022, the commission shall obtain or develop updated water availability models for the Brazos River, Neches River, Red River, and Rio Grande river basins. The commission may collect data from all jurisdictions that allocate the waters of the rivers, including jurisdictions outside this state. This subsection expires September 1, 2023.

(i) Within 90 days of completing a water availability model for a river basin, the commission shall provide to all holders of existing permits, certified filings, and certificates of adjudication in that river basin the projected amount of water that would be available during a drought of record.

(j) Within 90 days of completing a water availability model for a river basin, the commission shall provide to each regional water planning group created under Section 16.053 of this code in that river basin the projected amount of water that would be available if cancellation procedures were instigated under the provisions of

Subchapter E, Chapter 11, of this code.

(k) Within 90 days of completing a water availability model for a river basin, the commission, in coordination with the Parks and Wildlife Department and with input from the Department of Agriculture, where appropriate, shall determine the potential impact of reusing municipal and industrial effluent on existing water rights, instream uses, and freshwater inflows to bays and estuaries. Within 30 days of making this determination, the commission shall provide the projections to the board and each regional water planning group created under Section 16.053 of this code in that river basin.

(l) The executive administrator shall obtain or develop groundwater availability models for major and minor aquifers in coordination with groundwater conservation districts and regional water planning groups created under Section 16.053 that overlie the aquifers. Modeling of major aquifers shall be completed not later than October 1, 2004. On completing a groundwater availability model for an aquifer, the executive administrator shall provide the model to each groundwater conservation district and each regional water planning group created under Section 16.053 overlying that aquifer.

(m) The executive administrator may conduct surveys of entities using groundwater and surface water for municipal, industrial, power generation, or mining purposes at intervals determined appropriate by the executive administrator to gather data to be used for long-term water supply planning. Recipients of the survey shall complete and return the survey to the executive administrator. A person who fails to timely complete and return the survey is not eligible for funding from the board for board programs and is ineligible to obtain permits, permit amendments, or permit renewals from the commission under Chapter 11. A person who fails to complete and return the survey commits an offense that is punishable as a Class C misdemeanor. This subsection does not apply to survey information regarding windmills used for domestic and livestock use.

(n) Information collected through field investigations on a landowner's property by the executive administrator after September 1, 2003, solely for use in the development of groundwater availability models under Subsection (l) of this section that reveals site-specific information about such landowner is not subject to Chapter 552, Government Code, and may not be disclosed to any person outside the board if the landowner on whose land the information is collected has requested in writing that such information be deemed

confidential. If a landowner requests that his or her information not be disclosed, the executive administrator may release information regarding groundwater information only if the information is summarized in a manner that prevents the identification of an individual or specific parcel of land and the landowner. This subsection does not apply to a parcel of land that is publicly owned.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 7.01, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 3, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 518, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 3, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1222, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.15, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1057, Sec. 3, 4, eff. June 20, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 164 (H.B. 723), Sec. 1, eff. September 1, 2019.

Sec. 16.0121. WATER AUDITS. (a) In this section, "retail public utility" has the meaning assigned by Section 13.002.

(b) Except as provided by Subsection (b-1), a retail public utility providing potable water shall perform and file with the board an annual water audit computing the utility's system water loss during the preceding year.

(b-1) A retail public utility providing potable water that does not receive from the board financial assistance and is providing service to 3,300 or fewer connections shall perform and file with the board every five years a water audit computing the utility's most recent annual system water loss.

(c) The board shall develop appropriate methodologies and submission dates for a water audit required under Subsection (b) or (b-1) for the following categories of retail public utilities:

(1) retail public utilities serving populations of 100,000 or more;

(2) retail public utilities serving populations of 50,000 or more but less than 100,000;

(3) retail public utilities serving populations of more

than 10,000 but less than 50,000; and

(4) retail public utilities serving populations of 10,000 or less.

(d) In developing the methodologies required by Subsection (c), the board shall ensure that each methodology:

(1) is financially feasible for the category of retail public utility for which it is developed; and

(2) considers differences in population density, source of water supply, the mean income of the service population, and other factors determined by the board.

(e) The methodologies required by Subsection (c) shall account for various components of system water loss, including loss from distribution lines, inaccuracies in meters or accounting practices, and theft.

(f) The board shall compile the information included in the water audits required by Subsections (b) and (b-1) according to category of retail public utility and according to regional water planning area. The regional planning group for a regional planning area shall use the information to identify appropriate water management strategies in the development of a regional water plan under Section 16.053.

(g) A retail public utility providing potable water that receives from the board financial assistance shall use a portion of that financial assistance, or any additional financial assistance provided by the board for the purpose described by this subsection, to mitigate the utility's system water loss if, based on a water audit filed by the utility under this section, the water loss meets or exceeds the threshold established by board rule. On the request of a retail public utility, the board may waive the requirements of this subsection if the board finds that the utility is satisfactorily addressing the utility's system water loss.

(h) For each category of retail public utility listed in Subsection (c), the board shall adopt rules regarding:

(1) the amount of system water loss that requires a utility to take action under Subsection (g); and

(2) the use of financial assistance from the board as required by Subsection (g) to mitigate system water loss.

(i) The board by rule shall require the audits required by Subsections (b) and (b-1) to be completed by a person trained to conduct water loss auditing.

(j) The board shall make training on water loss auditing available without charge from the board's website. The board may provide training in person or by video or a functionally similar and widely available medium. Training provided under this subsection must include comprehensive knowledge of water utility systems and terminology and any tools available for analyzing audit results. In creating training materials, the board may consider other organizations' training programs.

Added by Acts 2003, 78th Leg., ch. 744, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1041 (H.B. 3090), Sec. 1, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 278 (H.B. 857), Sec. 1, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1139 (H.B. 3605), Sec. 1, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 155 (H.B. 949), Sec. 1, eff. May 28, 2015.
Acts 2017, 85th Leg., R.S., Ch. 347 (H.B. 1573), Sec. 1, eff. September 1, 2017.

Sec. 16.013. ENGINEERING, HYDROLOGIC, AND GEOLOGIC FUNCTIONS. The executive administrator shall advise and assist the board and the commission with regard to engineering, hydrologic, and geologic matters concerning the water resources of the state. The executive administrator shall evaluate, prepare, and publish engineering, hydrologic, and geologic data, information, and reports relating to the water resources of the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.014. SILT LOAD OF STREAMS, ETC. The executive administrator shall determine the silt load of streams, make investigations and studies of the duty of water, and make surveys to determine the water needs of the distinct regional divisions of the watershed areas of the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.015. STUDIES OF UNDERGROUND WATER SUPPLY. The executive administrator may make studies and investigations of the physical characteristics of water-bearing formations and of the sources, occurrence, quantity, and quality of the underground water supply of the state and may study and investigate feasible methods to conserve, preserve, improve, and supplement this supply. The work shall first be undertaken in areas where, in the judgment of the board, the greatest need exists, and in determining the need, the board shall consider all beneficial uses essential to the general welfare of the state. Water-bearing formations may be explored by coring or other mechanical or electrical means when the area to be investigated has more than a local influence on water resources.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.016. POLLUTION OF RED RIVER TRIBUTARIES. Within the limits of available money and facilities, the executive administrator shall study salt springs, gypsum beds, and other sources of natural pollution of the tributaries of the Red River and shall study means of eliminating this natural pollution and preventing it from reaching the Red River.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.017. TOPOGRAPHIC AND GEOLOGIC MAPPING. (a) The executive administrator shall carry out the program for topographic and geologic mapping of the state.

(b) The executive administrator shall operate as part of the Texas Natural Resources Information System a strategic mapping program to acquire, store, and distribute digital, geospatial

information.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.12, eff. September 1, 2007.

Sec. 16.018. SOIL RESOURCE PLANNING. The executive administrator may contract with the State Soil Conservation Board for joint investigation and research in the field of soil resource planning. The State Soil Conservation Board may appoint a representative to advise and work with the executive administrator.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.019. COOPERATIVE AGREEMENTS. With the approval of the board, the executive administrator may negotiate and execute contracts with persons or with federal, state, or local agencies for joint or cooperative studies and investigations of the occurrence, quantity, and quality of the surface water and groundwater of the state; the topographical mapping of the state; and the collection, processing, and analysis of other basic data relating to the development of the water resources of the state and for the administration and performance of these contracts.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.020. MASTER PLANS OF DISTRICTS, ETC. The executive director shall review and analyze master plans and other reports of conservation districts, river authorities, and state agencies and shall make its recommendations to the commission in all cases where approval of the commission is required by law or is requested by a

district, authority, or agency.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985.

Sec. 16.021. TEXAS NATURAL RESOURCES INFORMATION SYSTEM. (a) The executive administrator shall establish the Texas Natural Resources Information System (TNRIS) to serve Texas agencies and citizens as a centralized clearinghouse and referral center for:

(1) natural resource data;

(2) census data;

(3) data related to emergency management; and

(4) other socioeconomic data.

(b) The executive administrator may, on behalf of TNRIS, enter into partnerships with private entities to provide additional funding for improved access to TNRIS information. The board shall adopt administrative rules to describe the process of establishing partnerships, define the types of partnerships that may be formed, establish the fee collection process, and define the nondiscriminatory methods used to determine which private entities may enter into partnerships. Any process developed by the board must comply with all applicable laws regarding ethics, purchasing, and contracts.

(c) The executive administrator shall designate the director of the Texas Natural Resources Information System to serve as the state geographic information officer. The state geographic information officer shall:

(1) coordinate the acquisition and use of high-priority imagery and data sets;

(2) establish, support, and disseminate authoritative statewide geographic data sets;

(3) support geographic data needs of emergency management responders during emergencies;

(4) monitor trends in geographic information technology; and

(5) support public access to state geographic data and resources.

(d) Not later than December 1, 2016, and before the end of each

successive five-year period after that date, the board shall submit to the governor, lieutenant governor, and speaker of the house of representatives a report that contains recommendations regarding:

(1) statewide geographic data acquisition needs and priorities, including updates on progress in maintaining the statewide digital base maps described by Subsection (e)(6);

(2) policy initiatives to address the acquisition, use, storage, and sharing of geographic data across the state;

(3) funding needs to acquire data, implement technologies, or pursue statewide policy initiatives related to geographic data; and

(4) opportunities for new initiatives to improve the efficiency, effectiveness, or accessibility of state government operations through the use of geographic data.

(d-1) The board shall consult with stakeholders in preparing the report required by Subsection (d).

(e) The executive administrator shall:

(1) further develop the Texas Natural Resources Information System by promoting and providing for effective acquisition, archiving, documentation, indexing, and dissemination of natural resource and related digital and nondigital data and information;

(2) obtain information in response to disagreements regarding names and name spellings for natural and cultural features in the state and provide this information to the Board on Geographic Names of the United States Department of the Interior;

(3) make recommendations to the Board on Geographic Names of the United States Department of the Interior for naming any natural or cultural feature subject to the limitations provided by Subsection (f);

(4) make recommendations to the Department of Information Resources to adopt and promote standards that facilitate sharing of digital natural resource data and related socioeconomic data among federal, state, and local governments and other interested parties;

(5) acquire and disseminate natural resource and related socioeconomic data describing the Texas-Mexico border region; and

(6) coordinate, conduct, and facilitate the development, maintenance, and use of mutually compatible statewide digital base maps depicting natural resources and man-made features.

(f) A recommendation may not be made under Subsection (e)(3) for:

(1) a feature previously named under statutory authority or recognized by an agency of the federal government, the state, or a political subdivision of the state;

(2) a feature located on private property for which consent of the property owner cannot be obtained; or

(3) naming a natural or cultural feature for a living person.

(g) The board may establish one or more advisory committees to assist the board or the executive administrator in implementing this section, including by providing information in connection with the preparation of the report required by Subsection (d). In appointing members to an advisory committee, the board shall consider including representatives of:

(1) state agencies that are major users of geographic data;

(2) federal agencies;

(3) local governments; and

(4) the Department of Information Resources.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.045, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 21, Sec. 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1010, Sec. 7.02, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1234, Sec. 24, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 67 (S.B. 622), Sec. 1, eff. May 11, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 6, eff. September 1, 2011.

Sec. 16.023. STRATEGIC MAPPING ACCOUNT. (a) The strategic mapping account is an account in the general revenue fund. The account consists of:

(1) money directly appropriated to the board;

(2) money transferred by the board from other funds available to the board;

(3) money from gifts or grants from the United States government, state, regional, or local governments, educational institutions, private sources, or other sources;

(4) proceeds from the sale of maps, data, publications, and

other items; and

(5) interest earned on the investment of money in the account and depository interest allocable to the account.

(b) The account may be appropriated only to the board to:

(1) develop, administer, and implement the strategic mapping program;

(2) provide grants to political subdivisions for projects related to the development, use, and dissemination of digital, geospatial information; and

(3) administer, implement, and operate other programs of the Texas Natural Resources Information System, including:

(A) the operation of a Texas-Mexico border region information center for the purpose of implementing Section 16.021(e)(5);

(B) the acquisition, storage, and distribution of historical maps, photographs, and paper map products;

(C) the maintenance and enhancement of information technology; and

(D) the production, storage, and distribution of other digital base maps, as determined by the executive administrator.

(c) The board may invest, reinvest, and direct the investment of any available money in the fund as provided by law for the investment of money under Section 404.024, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.13, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 7, eff. September 1, 2011.
Reenacted by Acts 2019, 86th Leg., R.S., Ch. 1173 (H.B. 3317), Sec. 18(a), eff. June 14, 2019.

Sec. 16.024. FINANCIAL ASSISTANCE FOR DIGITAL, GEOSPATIAL INFORMATION PROJECTS. (a) A political subdivision seeking a grant under Section 16.023 must file an application with the board.

(b) An application must be filed in the manner and form required by board rules.

(c) In reviewing an application by a political subdivision for a grant, the board shall consider:

(1) the degree to which the political subdivision has used other available resources to finance the development, use, and dissemination of digital, geospatial information;

(2) the willingness and ability of the political subdivision to develop, use, and disseminate digital, geospatial information; and

(3) the benefits that will be gained by making the grant.

(d) The board may approve a grant to a political subdivision only if the board finds that:

(1) the grant will supplement rather than replace money of the political subdivision;

(2) the public interest is served by providing the grant; and

(3) the grant will further the state's ability to gather, develop, use, and disseminate digital, geospatial information.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.13, eff. September 1, 2007.

Sec. 16.025. REPORTING OF FEDERAL MONEY USED FOR FLOOD RESEARCH, PLANNING, AND MITIGATION PROJECTS. The board shall maintain and make available on the board's Internet website a publicly accessible database of the information submitted under Section 2061.002, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 587 (S.B. 563), Sec. 2, eff. September 1, 2019.

SUBCHAPTER C. PLANNING

Sec. 16.051. STATE WATER PLAN: DROUGHT, CONSERVATION, DEVELOPMENT, AND MANAGEMENT; EFFECT OF PLAN. (a) Not later than January 5, 2002, and before the end of each successive five-year period after that date, the board shall prepare, develop, formulate, and adopt a comprehensive state water plan that incorporates the regional water plans approved under Section 16.053. The state water plan shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions, in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare;

further economic development; and protect the agricultural and natural resources of the entire state.

(a-1) The state water plan must include:

(1) an evaluation of the state's progress in meeting future water needs, including an evaluation of the extent to which water management strategies and projects implemented after the adoption of the preceding state water plan have affected that progress;

(2) an analysis of the number of projects included in the preceding state water plan that received financial assistance from the board; and

(3) with respect to projects included in the preceding state water plan that were given a high priority by the board for purposes of providing financial assistance under Subchapter G, Chapter 15:

(A) an assessment of the extent to which the projects were implemented in the decade in which they were needed; and

(B) an analysis of any impediments to the implementation of any projects that were not implemented in the decade in which they were needed.

(a-2) To assist the board in evaluating the state's progress in meeting future water needs, the board may obtain implementation data from the regional water planning groups.

(b) The state water plan, as formally adopted by the board, shall be a guide to state water policy. The commission shall take the plan into consideration in matters coming before it.

(c) The board by rule shall define and designate river basins and watersheds.

(d) The board, in coordination with the commission, the Department of Agriculture, and the Parks and Wildlife Department, shall adopt by rule guidance principles for the state water plan which reflect the public interest of the entire state. When adopting guidance principles, due consideration shall be given to the construction and improvement of surface water resources and the application of principles that result in voluntary redistribution of water resources. The board shall review and update the guidance principles, with input from the commission, the Department of Agriculture, and the Parks and Wildlife Department, as necessary but at least every five years to coincide with the five-year cycle for adoption of a new water plan as described in Subsection (a).

(e) On adoption the board shall deliver the state water plan to

the governor, the lieutenant governor, and the speaker of the house of representatives and present the plan for review to the appropriate legislative committees. The plan shall include legislative recommendations that the board believes are needed and desirable to facilitate more voluntary water transfers. The plan shall identify river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the board recommends for protection under this section.

(f) The legislature may designate a river or stream segment of unique ecological value. This designation solely means that a state agency or political subdivision of the state may not finance the actual construction of a reservoir in a specific river or stream segment designated by the legislature under this subsection.

(g) The legislature may designate a site of unique value for the construction of a reservoir. A state agency or political subdivision of the state may not obtain a fee title or an easement that would significantly prevent the construction of a reservoir on a site designated by the legislature under this subsection.

(g-1) Notwithstanding any other provisions of law, a site is considered to be a designated site of unique value for the construction of a reservoir if the site is recommended for designation in the 2007 state water plan adopted by the board and in effect on May 1, 2007. The designation of a unique reservoir site under this subsection terminates on September 1, 2015, unless there is an affirmative vote by a proposed project sponsor to make expenditures necessary in order to construct or file applications for permits required in connection with the construction of the reservoir under federal or state law.

(h) The board, the commission, or the Parks and Wildlife Department or a political subdivision affected by an action taken in violation of Subsection (f) or (g) may bring a cause of action to remedy or prevent the violation. A cause of action brought under this subsection must be filed in a district court in Travis County or in the county in which the action is proposed or occurring.

(i) For purposes of this section, the acquisition of fee title or an easement by a political subdivision for the purpose of providing retail public utility service to property in the reservoir site or allowing an owner of property in the reservoir site to improve or develop the property may not be considered a significant impairment that prevents the construction of a reservoir site under

Subsection (g). A fee title or easement acquired under this subsection may not be considered the basis for preventing the future acquisition of land needed to construct a reservoir on a designated site.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.046, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 516, Sec. 4, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 1.01, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 4, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 4, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1223, Sec. 2, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.16, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 3.01, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 4.01, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 8, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 921 (S.B. 1511), Sec. 2, eff. September 1, 2017.

Sec. 16.052. INTERREGIONAL PLANNING COUNCIL. (a) The board, at an appropriate time in each five-year cycle for the adoption of a new state water plan, shall appoint an interregional planning council. The members of the council serve until a new state water plan is adopted.

(b) The council consists of one member of each regional water planning group. Each regional water planning group shall nominate one or more members for appointment to the council, and the board shall consider the nominations in making appointments to the council.

(c) The purposes of the council are to:

(1) improve coordination among the regional water planning groups, and between each regional water planning group and the board, in meeting the goals of the state water planning process and the water needs of the state as a whole;

(2) facilitate dialogue regarding water management strategies that could affect multiple regional water planning areas;

and

(3) share best practices regarding operation of the regional water planning process.

(d) The council shall:

(1) hold at least one public meeting; and

(2) prepare a report to the board on the council's work.

Added by Acts 2019, 86th Leg., R.S., Ch. 745 (H.B. 807), Sec. 1, eff. June 10, 2019.

Sec. 16.053. REGIONAL WATER PLANS. (a) The regional water planning group in each regional water planning area shall prepare a regional water plan, using an existing state water plan identified in Section 16.051 of this code and local water plans prepared under Section 16.054 of this code as a guide, if present, that provides for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of that particular region.

(b) No later than September 1, 1998, the board shall designate the areas for which regional water plans shall be developed, taking into consideration such factors as river basin and aquifer delineations, water utility development patterns, socioeconomic characteristics, existing regional water planning areas, political subdivision boundaries, public comment, and other factors the board deems relevant. The board shall review and update the designations as necessary but at least every five years.

(c) No later than 60 days after the designation of the regions under Subsection (b), the board shall designate representatives within each regional water planning area to serve as the initial coordinating body for planning. The initial coordinating body may then designate additional representatives to serve on the regional water planning group. The initial coordinating body shall designate additional representatives if necessary to ensure adequate representation from the interests comprising that region, including the public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric

generating utilities, river authorities, water districts, and water utilities. The regional water planning group shall maintain adequate representation from those interests. In addition, the groundwater conservation districts located in each management area, as defined by Section 36.001, located in the regional water planning area shall appoint one representative of a groundwater conservation district located in the management area and in the regional water planning area to serve on the regional water planning group. In addition, representatives of the board, the Parks and Wildlife Department, the Department of Agriculture, and the State Soil and Water Conservation Board shall serve as ex officio members of each regional water planning group.

(d) The board shall provide guidelines for the consideration of existing regional planning efforts by regional water planning groups. The board shall provide guidelines for the format in which information shall be presented in the regional water plans.

(e) Each regional water planning group shall submit to the development board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the development board under Section 16.051(d);

(2) provides information based on data provided or approved by the development board in a format consistent with the guidelines provided by the development board under Subsection (d);

(2-a) is consistent with the desired future conditions adopted under Section 36.108 for the relevant aquifers located in the regional water planning area as of the most recent deadline for the board to adopt the state water plan under Section 16.051 or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan; provided, however, that if no groundwater conservation district exists within the area of the regional water planning group, the regional water planning group shall determine the supply of groundwater for regional planning purposes; the Texas Water Development Board shall review and approve, prior to inclusion in the regional water plan, that the groundwater supply for the regional planning group without a groundwater conservation district in its area is physically compatible, using the board's groundwater availability models, with the desired future conditions adopted under Section 36.108 for the relevant aquifers in the groundwater management area that are regulated by groundwater

conservation districts;

(3) identifies:

(A) each source of water supply in the regional water planning area, including information supplied by the executive administrator on the amount of modeled available groundwater in accordance with the guidelines provided by the development board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response;

(C) actions to be taken as part of the response;

(D) existing major water infrastructure facilities that may be used for interconnections in the event of an emergency shortage of water; and

(E) unnecessary or counterproductive variations in specific drought response strategies, including outdoor watering restrictions, among user groups in the regional water planning area that may confuse the public or otherwise impede drought response efforts;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region and potential impacts on public health, safety, or welfare in this state;

(B) approved groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) if interbasin

transfers are contemplated;

(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements;

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder; and

(J) opportunities for and the benefits of developing large-scale desalination facilities for:

(i) marine seawater that serve local or regional entities; and

(ii) brackish groundwater that serve local or regional brackish groundwater production zones identified and designated under Section 16.060(b)(5);

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists;

(8) describes the impact of proposed water projects on water quality;

(9) includes information on:

(A) projected water use and conservation in the regional water planning area; and

(B) the implementation of state and regional water plan projects, including water conservation strategies, necessary to meet the state's projected water demands;

(10) if the regional water planning area has significant identified water needs, provides a specific assessment of the potential for aquifer storage and recovery projects to meet those needs;

(11) sets one or more specific goals for gallons of water use per capita per day in each decade of the period covered by the plan for the municipal water user groups in the regional water planning area; and

(12) assesses the progress of the regional water planning area in encouraging cooperation between water user groups for the purpose of achieving economies of scale and otherwise incentivizing strategies that benefit the entire region.

(e-1) On request of the Texas Water Advisory Council, a regional planning group shall provide the council a copy of that planning group's regional water plan.

(f) No later than September 1, 1998, the board shall adopt rules:

(1) to provide for the procedures for adoption of regional water plans by regional water planning groups and for approval of regional water plans by the board; and

(2) to govern procedures to be followed in carrying out the responsibilities of this section.

(g) The board shall provide technical and financial assistance to the regional water planning groups in the development of their plans. The board shall simplify, as much as possible, planning requirements in regions with abundant water resources. The board, if requested, may facilitate resolution of conflicts within regions.

(h)(1) Prior to the preparation of the regional water plan, the regional water planning group shall, after notice, hold at least one public meeting at some central location readily accessible to the public within the regional water planning area to gather suggestions and recommendations from the public as to issues that should be addressed in the plan or provisions that should be considered for inclusion in the plan.

(2) The regional water planning group shall provide an ongoing opportunity for public input during the preparation of the regional water plan.

(3) After the regional water plan is initially prepared, the regional water planning group shall, after notice, hold at least one public hearing at some central location readily accessible to the public within the regional water planning area. The group shall make copies of the plan available for public inspection at least one month before the hearing by providing a copy of the plan in the county courthouse and at least one public library of each county having land in the region. Notice for the hearing shall include a listing of these and any other location where the plan is available for review.

(4) After the regional water plan is initially prepared, the regional water planning group shall submit a copy of the plan to

the board. The board shall submit comments on the regional water plan as to whether the plan meets the requirements of Subsection (e) of this section.

(5) If no interregional conflicts exist, the regional water planning group shall consider all public and board comments; prepare, revise, and adopt the final plan; and submit the adopted plan to the board for approval and inclusion in the state water plan.

(6) If an interregional conflict exists, the board shall facilitate coordination between the involved regions to resolve the conflict. If conflict remains, the board shall resolve the conflict. On resolution of the conflict, the involved regional water planning groups shall prepare revisions to their respective plans and hold, after notice, at least one public hearing at some central location readily accessible to the public within their respective regional water planning areas. The regional water planning groups shall consider all public and board comments; prepare, revise, and adopt their respective plans; and submit their plans to the board for approval and inclusion in the state water plan.

(7) The board may approve a regional water plan only after it has determined that:

(A) all interregional conflicts involving that regional water planning area have been resolved;

(B) the plan includes water conservation practices and drought management measures incorporating, at a minimum, the provisions of Sections 11.1271 and 11.1272; and

(C) the plan is consistent with long-term protection of the state's water resources, agricultural resources, and natural resources as embodied in the guidance principles adopted under Section 16.051(d).

(8) Notice required by Subdivision (1), (3), or (6) of this subsection must be:

(A) published once in a newspaper of general circulation in each county located in whole or in part in the regional water planning area before the 30th day preceding the date of the public meeting or hearing; and

(B) mailed to:

(i) each mayor of a municipality with a population of 1,000 or more that is located in whole or in part in the regional water planning area;

(ii) each county judge of a county located in whole

or in part in the regional water planning area;

(iii) each special or general law district or river authority with responsibility to manage or supply water in the regional water planning area;

(iv) each retail public utility that:

(a) serves any part of the regional water planning area; or

(b) receives water from the regional water planning area; and

(v) each holder of record of a permit, certified filing, or certificate of adjudication for the use of surface water the diversion of which occurs in the regional water planning area.

(9) Notice published or mailed under Subdivision (8) of this subsection must contain:

(A) the date, time, and location of the public meeting or hearing;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information on how the public may submit comments.

(10) The regional water planning group may amend the regional water plan after the plan has been approved by the board. If, after the regional water plan has been approved by the board, the plan includes a water management strategy or project that ceases to be feasible, the regional water planning group shall amend the plan to exclude that water management strategy or project and shall consider amending the plan to include a feasible water management strategy or project in order to meet the need that was to be addressed by the infeasible water management strategy or project. For purposes of this subdivision, a water management strategy or project is considered infeasible if the proposed sponsor of the water management strategy or project has not taken an affirmative vote or other action to make expenditures necessary to construct or file applications for permits required in connection with the implementation of the water management strategy or project under federal or state law on a schedule that is consistent with the completion of the implementation of the water management strategy or project by the time the water management strategy or project is projected by the regional water plan or the state water plan to be

needed. Subdivisions (1)-(9) apply to an amendment to the plan in the same manner as those subdivisions apply to the plan.

(11) This subdivision applies only to an amendment to a regional water plan approved by the board. This subdivision does not apply to the adoption of a subsequent regional water plan for submission to the board as required by Subsection (i). Notwithstanding Subdivision (10), the regional water planning group may amend the plan in the manner provided by this subdivision if the executive administrator makes a written determination that the proposed amendment qualifies for adoption in the manner provided by this subdivision before the regional water planning group votes on adoption of the amendment. A proposed amendment qualifies for adoption in the manner provided by this subdivision only if the amendment is a minor amendment, as defined by board rules, that will not result in the overallocation of any existing or planned source of water, does not relate to a new reservoir, and will not have a significant effect on instream flows or freshwater inflows to bays and estuaries. If the executive administrator determines that a proposed amendment qualifies for adoption in the manner provided by this subdivision, the regional water planning group may adopt the amendment at a public meeting held in accordance with Chapter 551, Government Code. The proposed amendment must be placed on the agenda for the meeting, and notice of the meeting must be given in the manner provided by Chapter 551, Government Code, at least two weeks before the date the meeting is held. The public must be provided an opportunity to comment on the proposed amendment at the meeting.

(12) Each regional water planning group and any committee or subcommittee of a regional water planning group are subject to Chapters 551 and 552, Government Code.

(i) The regional water planning groups shall submit their adopted regional water plans to the board by January 5, 2001, for approval and inclusion in the state water plan. In conjunction with the submission of regional water plans, each planning group should make legislative recommendations, if any, to facilitate more voluntary water transfers in the region or for any other changes that the members of the planning group believe would improve the water planning process. Subsequent regional water plans shall be submitted at least every five years thereafter, except that a regional water planning group may elect to implement simplified planning, no more often than every other five-year planning cycle, and in accordance

with guidance to be provided by the board, if the group determines that, based on its own initial analyses using updated groundwater and surface water availability information, there are no significant changes to the water availability, water supplies, or water demands in the regional water planning area. At a minimum, simplified planning will require updating groundwater and surface water availability values in the regional water plan, meeting any other new statutory or other planning requirements that come into effect during each five-year planning cycle, and formally adopting and submitting the regional water plan for approval. Public participation for revised regional plans shall follow the procedures under Subsection (h).

(j) The board may provide financial assistance to political subdivisions under Subchapters E and F of this chapter, Subchapters C, D, E, F, J, O, Q, and R, Chapter 15, and Subchapters D, I, K, and L, Chapter 17, for water supply projects only if:

(1) the board determines that the needs to be addressed by the project will be addressed in a manner that is consistent with the state water plan;

(2) beginning January 5, 2002, the board:

(A) has approved a regional water plan as provided by Subsection (i), and any required updates of the plan, for the region of the state that includes the area benefiting from the proposed project; and

(B) determines that the needs to be addressed by the project will be addressed in a manner that is consistent with that regional water plan; and

(3) the board finds that the water audit required under Section 16.0121 has been completed and filed.

(k) The board may waive the requirements of Subsection (j) of this section if the board determines that conditions warrant the waiver.

(l) A political subdivision may contract with a regional water planning group to assist the regional water planning group in developing or revising a regional water plan.

(m) A cause of action does not accrue against a regional water planning group, a representative who serves on the regional water planning group, or an employee of a political subdivision that contracts with the regional water planning group under Subsection (l) for an act or omission in the course and scope of the person's work

relating to the regional water planning group.

(n) A regional water planning group, a representative who serves on the regional water planning group, or an employee of a political subdivision that contracts with the regional water planning group under Subsection (l) is not liable for damages that may arise from an act or omission in the course and scope of the person's work relating to the regional water planning group.

(o) The attorney general, on request, shall represent a regional water planning group, a representative who serves on the regional water planning group, or an employee of a political subdivision that contracts with the regional water planning group under Subsection (l) in a suit arising from an act or omission relating to the regional water planning group.

(p) If a groundwater conservation district files a petition with the development board stating that a conflict requiring resolution may exist between the district's approved management plan developed under Section 36.1071 and an approved state water plan, the development board shall provide technical assistance to and facilitate coordination between the district and the involved region to resolve the conflict. Not later than the 45th day after the date the groundwater conservation district files a petition with the development board, if the conflict has not been resolved, the district and the involved region shall mediate the conflict. The district and the involved region may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the district and the involved region cannot resolve the conflict through mediation, the development board shall resolve the conflict not later than the 60th day after the date the mediation is completed as provided by Subsections (p-1) and (p-2).

(p-1) If the development board determines that resolution of the conflict requires a revision of an approved regional water plan, the development board shall suspend the approval of that plan and provide information to the regional water planning group. The regional water planning group shall prepare any revisions to its plan

specified by the development board and shall hold, after notice, at least one public hearing at some central location readily accessible to the public within the regional water planning area. The regional water planning group shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board for approval and inclusion in the state water plan.

(p-2) If the development board determines that resolution of the conflict requires a revision of the district's approved groundwater conservation district management plan, the development board shall provide information to the district. The groundwater district shall prepare any revisions to its plan based on the information provided by the development board and shall hold, after notice, at least one public hearing at some central location readily accessible to the public within the district. The groundwater district shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board.

(p-3) If the groundwater conservation district disagrees with the decision of the development board under Subsection (p), the district may appeal the decision to a district court in Travis County. Costs for the appeal shall be set by the court hearing the appeal. An appeal under this subsection is by trial de novo.

(p-4) On the request of the involved region or groundwater conservation district, the development board shall include discussion of the conflict and its resolution in the state water plan that the development board provides to the governor, the lieutenant governor, and the speaker of the house of representatives under Section 16.051(e).

(q) Each regional planning group shall examine the financing needed to implement the water management strategies and projects identified in the group's most recent approved regional plan and, not later than June 1, 2002, shall report to the board regarding:

(1) how local governments, regional authorities, and other political subdivisions in the region propose to pay for water infrastructure projects identified in the plan; and

(2) what role the regional planning group proposes for the state in financing projects identified in the plan, giving particular attention to proposed increases in the level of state participation in funding for regional projects to meet needs beyond the reasonable

financing capability of local governments, regional authorities, and other political subdivisions involved in building water infrastructure.

Text of subsection as added by Acts 2005, 79th Leg., R.S., Ch. 1200 (H.B. 578), Sec. 1

(r) Information described by Subsection (e)(3)(D) that is included in a regional water plan submitted to the board is excepted from required disclosure under the public information law, Chapter 552, Government Code.

Text of subsection as added by Acts 2005, 79th Leg., R.S., Ch. 1097 (H.B. 2201), Sec. 8 and amended by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.15

(r) The board by rule shall provide for reasonable flexibility to allow for a timely amendment of a regional water plan, the board's approval of an amended regional water plan, and the amendment of the state water plan. If an amendment under this subsection is to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Section 5.001, the rules may allow for amending a regional water plan without providing notice and without a public meeting or hearing under Subsection (h) if the amendment does not:

(1) significantly change the regional water plan, as reasonably determined by the board; or

(2) adversely affect other water management strategies in the regional water plan.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.047, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 1.02, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 5, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 5, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1180, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1222, Sec. 2, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1223, Sec. 3, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.17 to 2.19, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1234, Sec. 25, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 744, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1057, Sec. 5, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1275, Sec. 3(45), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1097 (H.B. 2201), Sec. 8, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1200 (H.B. 578), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.14, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.15, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 595 (S.B. 181), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 9, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 9, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 990 (H.B. 30), Sec. 2, eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1180 (S.B. 1101), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 7 (S.B. 347), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 19.001, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 471 (H.B. 2215), Sec. 1, eff. June 9, 2017.

Acts 2017, 85th Leg., R.S., Ch. 921 (S.B. 1511), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 921 (S.B. 1511), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 921 (S.B. 1511), Sec. 5, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 745 (H.B. 807), Sec. 2, eff. June 10, 2019.

Sec. 16.054. LOCAL WATER PLANNING. (a) Notwithstanding the provisions of this subsection, groundwater districts are the state's preferred method of managing groundwater resources. It is the policy of the state that water resource management, water conservation, and

drought planning should occur on an ongoing basis. The board, commission, and Parks and Wildlife Department shall make available where appropriate technical and financial assistance for such planning. In addition, the Department of Agriculture may provide input and assistance, as appropriate, for local water planning.

(b) Local plans may be submitted to the appropriate regional water planning group for the area as follows:

(1) holders of existing permits, certified filings, or certificates of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more may submit plans required by Section 11.1271 of this code;

(2) retail and wholesale public water suppliers and irrigation districts may submit plans required by Section 11.1272 of this code;

(3) groundwater districts may submit management plans certified under Section 36.1072 of this code; and

(4) special districts may submit conservation or management plans required by general or special law.

(c) When preparing a plan to be submitted under this section, a person shall consider the implementation of a desalination program if practicable.

(d) The regional water planning group shall consider any plan submitted under this section when preparing the regional water plan under Section 16.053 of this code. A political subdivision, including a groundwater conservation district, in the regional water planning area may request a regional water planning group to consider specific changes to a regional water plan based on changed conditions or new information. The regional water planning group shall consider the request and shall amend its regional water plan if it determines that an amendment is warranted. If the entity requesting the change is dissatisfied with the decision of the regional planning group, the entity may request that the board review the decision and consider changing the state-approved regional plan.

(e) After January 5, 2002, when preparing individual water plans that address drought or the development, management, or conservation of water resources from the holders of existing permits, certified filings, or certificates of adjudication, the water suppliers, special districts, irrigation districts, and other water users should ensure that the plan is not in conflict with the applicable approved regional water plan for their region.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.047, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 1.02, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 6, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 6, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.20, eff. Sept. 1, 2001.

Sec. 16.055. DROUGHT RESPONSE PLAN. (a) The chief of the Texas Division of Emergency Management is the state drought manager. The state drought manager is responsible for managing and coordinating the drought response component of the state water plan.

(b) The drought preparedness council is created and shall meet as necessary to carry out the provisions of this section. The council is composed of one representative from each of the following entities, appointed by the administrative head of that entity:

(1) the Texas Division of Emergency Management;

(2) the board;

(3) the commission;

(4) the Parks and Wildlife Department;

(5) the Department of Agriculture;

(6) the Texas A&M AgriLife Extension Service;

(7) the State Soil and Water Conservation Board;

(8) the Texas Department of Housing and Community Affairs;

(9) the Texas A&M Forest Service;

(10) the Texas Department of Transportation;

(11) the Texas Department of Economic Development;

(12) the Public Utility Commission of Texas;

(13) the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region; and

(14) a representative of groundwater management interests who is appointed by the governor.

(c) The governor may designate any other person or a representative of any other entity to serve on the drought preparedness council.

(d) The state drought manager shall serve as chair of the drought preparedness council.

(e) The drought preparedness council shall be responsible for:

(1) the assessment and public reporting of drought monitoring and water supply conditions;

(2) advising the governor on significant drought conditions;

(3) recommending specific provisions for a defined state response to drought-related disasters for inclusion in the state emergency management plan and the state water plan;

(4) advising the regional water planning groups on drought-related issues in the regional water plans;

(5) ensuring effective coordination among state, local, and federal agencies in drought-response planning; and

(6) reporting to the legislature, not later than January 15 of each odd-numbered year, regarding significant drought conditions in the state.

(f) In performing its duties under this section, the drought preparedness council shall consider the following factors when determining whether a drought exists for the purposes of this section:

(1) meteorological conditions and forecasts;

(2) hydrological conditions and forecasts;

(3) water use and demand forecasts;

(4) water supply conditions and forecasts;

(5) the potential impacts of the water shortage on:

(A) the public health, safety, and welfare;

(B) economic development; and

(C) agricultural and natural resources; and

(6) other factors deemed appropriate by the council.

(g) Immediately upon the declaration under Section 418.014 or 418.108, Government Code, of a state of disaster in a county due to drought conditions, the county shall:

(1) publish notice of the declaration of the state of disaster in one or more newspapers having general circulation in the county; and

(2) give notice of the declaration of the state of disaster to:

(A) the chairman of the regional water planning group in which the county is located; and

(B) each person or entity located in the county that is required to develop a water conservation plan under Section 11.1271 or a drought contingency plan under Section 11.1272.

(h) On receipt of the notice under Subsection (g)(2)(B), the person or entity shall immediately implement the person's or entity's

water conservation plan and drought contingency plan, as applicable.

(i) Nothing in this section prevents a political subdivision or a person or entity required to develop a water conservation plan under Section 11.1271 or a drought contingency plan under Section 11.1272 from implementing water conservation measures.

(j) The board may notify the commission if the board determines that a person or entity has violated Subsection (h). Notwithstanding Section 7.051(b), a violation of Subsection (h) is enforceable in the manner provided by Chapter 7 for a violation of a provision of this code within the commission's jurisdiction or of a rule adopted by the commission under a provision of this code within the commission's jurisdiction.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1010, Sec. 1.02, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 979, Sec. 7, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1273, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 2B.10, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 557 (S.B. 662), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1094 (H.B. 3604), Sec. 1, eff. September 1, 2013.

Sec. 16.0551. STATE DROUGHT PREPAREDNESS PLAN. (a) The drought preparedness council shall develop and implement a comprehensive state drought preparedness plan for mitigating the effects of drought in the state and shall periodically update the plan. The plan shall be separate from the state water plan.

(b) The plan shall provide for:

(1) timely and systematic data collection, analysis, and dissemination of drought-related information;

(2) an organizational structure that:

(A) assures information flow between and within levels of government;

(B) defines the duties and responsibilities of all agencies with respect to drought; and

(C) assures coordination between the state and federal

governments through integration with applicable national drought policies;

(3) maintenance of an inventory of state and federal programs for assessing and responding to drought emergencies, together with updated recommendations regarding appropriate action;

(4) a mechanism to improve the timely and accurate assessment of drought impact on agriculture, industry, municipalities, wildlife, and the health of the natural resource base;

(5) provision of accurate and timely information to the media to keep the public informed of current conditions; and

(6) procedures to evaluate and revise the plan on a continuous basis to keep the plan responsive to state needs.

(c) The state drought manager shall use existing resources to develop an information and communications network to forecast and inform interested parties and the public of the potential for drought, including programs and staff of state agencies and other political subdivisions and of state institutions of higher education.

Added by Acts 1999, 76th Leg., ch. 979, Sec. 8, eff. June 18, 1999.

Sec. 16.056. FEDERAL ASSISTANCE IN FINANCING REGIONAL WATER PLANS. The executive administrator may take all necessary action to qualify for federal assistance in financing the development and improvement of the regional water plans.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.047, eff. Sept. 1, 1985. Renumbered from Water Code Sec. 16.057 and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 1.02, eff. Sept. 1, 1997.

Sec. 16.058. COLLECTION OF BAYS AND ESTUARIES DATA; CONDUCT OF STUDIES. (a) The Parks and Wildlife Department and the board shall have joint responsibility, in cooperation with other appropriate governmental agencies, to establish and maintain on a continuous basis a bay and estuary data collection and evaluation program and conduct studies and analyses to determine bay conditions necessary to support a sound ecological environment.

(b) The Parks and Wildlife Department and the board each shall

designate an employee to share equally in the oversight of the program studies. Other responsibilities shall be divided between the Parks and Wildlife Department and the board to maximize present in-house capabilities of personnel and equipment and to minimize costs to the state.

(c) The Parks and Wildlife Department and the board each shall have reasonable access to all data, studies, analyses, information, and reports produced by the other agency.

(d) The studies shall be completed not later than December 31, 1989. Publication of completed studies shall be submitted for comment to both the board and the Parks and Wildlife Department.

(e) The board may authorize the use of money from the research and planning fund established by Chapter 15 of this code to accomplish the purposes of this section. That money shall be used by the board in cooperation with the Parks and Wildlife Department for interagency contracts with cooperating agencies and universities and contracts with private sector establishments, as necessary, to accomplish the purposes of this section.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.047, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 419, Sec. 2, eff. Sept. 1, 1987.

Sec. 16.059. COLLECTION OF INSTREAM FLOW DATA; CONDUCT OF STUDIES. (a) The Parks and Wildlife Department, the commission, and the board, in cooperation with other appropriate governmental agencies, shall jointly establish and continuously maintain an instream flow data collection and evaluation program and shall conduct studies and analyses to determine appropriate methodologies for determining flow conditions in the state's rivers and streams necessary to support a sound ecological environment. Any stream that consists only of floodwaters and is dry more than 75 percent of the year is exempt from this section.

(b) The Parks and Wildlife Department, the commission, and the board shall each designate an employee to share equally in the oversight of the program studies. Other responsibilities shall be divided between the Parks and Wildlife Department, the commission, and the board to maximize present in-house capabilities of personnel and equipment and to minimize costs to the state.

(c) The Parks and Wildlife Department, the commission, and the board shall each have reasonable access to all data, studies, analyses, information, and reports produced by the other agencies.

(d) The priority studies shall be completed not later than December 31, 2016. The Parks and Wildlife Department, the commission, and the board shall establish a work plan that prioritizes the studies and that sets interim deadlines providing for publication of flow determinations for individual rivers and streams on a reasonably consistent basis throughout the prescribed study period. Before publication, completed studies shall be submitted for comment to the commission, the board, and the Parks and Wildlife Department.

(e) Results of studies completed under this section shall be considered by the commission in its review of any management plan, water right, or interbasin transfer.

(f) The board may authorize the use of money from the research and planning fund established under Chapter 15 to accomplish the purposes of this section. The money shall be used by the board in cooperation with the commission and the Parks and Wildlife Department for interagency contracts with cooperating agencies and universities and contracts with private sector establishments, as necessary, to accomplish the purposes of this section.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.17, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.23, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.23, eff. September 1, 2007.

Sec. 16.060. DESALINATION STUDIES AND RESEARCH. (a) The board shall undertake or participate in research, feasibility and facility planning studies, investigations, and surveys as it considers necessary to further the development of cost-effective water supplies from seawater or brackish groundwater desalination in the state.

(b) The board shall prepare a biennial progress report on the implementation of seawater or brackish groundwater desalination activities in the state and shall submit it to the governor,

lieutenant governor, and speaker of the house of representatives not later than December 1 of each even-numbered year. The report shall include:

(1) results of the board's studies and activities relative to seawater or brackish groundwater desalination during the preceding biennium;

(2) identification and evaluation of research, regulatory, technical, and financial impediments to the implementation of seawater or brackish groundwater desalination projects;

(3) evaluation of the role the state should play in furthering the development of large-scale seawater or brackish groundwater desalination projects in the state;

(4) the anticipated appropriation from general revenues necessary to continue investigating water desalination activities in the state during the next biennium; and

(5) identification and designation of local or regional brackish groundwater production zones in areas of the state with moderate to high availability and productivity of brackish groundwater that can be used to reduce the use of fresh groundwater and that:

(A) are separated by hydrogeologic barriers sufficient to prevent significant impacts to water availability or water quality in any area of the same or other aquifers, subdivisions of aquifers, or geologic strata that have an average total dissolved solids level of 1,000 milligrams per liter or less at the time of designation of the zones; and

(B) are not located in:

(i) an area of the Edwards Aquifer subject to the jurisdiction of the Edwards Aquifer Authority;

(ii) the boundaries of the:

(a) Barton Springs-Edwards Aquifer Conservation District;

(b) Harris-Galveston Subsidence District; or

(c) Fort Bend Subsidence District;

(iii) an aquifer, subdivision of an aquifer, or geologic stratum that:

(a) has an average total dissolved solids level of more than 1,000 milligrams per liter; and

(b) is serving as a significant source of water supply for municipal, domestic, or agricultural purposes at the time

of designation of the zones; or

(iv) an area of a geologic stratum that is designated or used for wastewater injection through the use of injection wells or disposal wells permitted under Chapter 27.

(c) The board shall actively pursue federal sources of funding for desalination projects in the state.

(d) The board shall work together with groundwater conservation districts and stakeholders and shall consider the Brackish Groundwater Manual for Texas Regional Water Planning Groups, and any updates to the manual, and other relevant scientific data or findings when identifying and designating brackish groundwater production zones under Subsection (b)(5).

(e) In designating a brackish groundwater production zone under this section, the board shall:

(1) determine the amount of brackish groundwater that the zone is capable of producing over a 30-year period and a 50-year period without causing a significant impact to water availability or water quality as described by Subsection (b)(5)(A); and

(2) include in the designation description:

(A) the amounts of brackish groundwater that the zone is capable of producing during the periods described by Subdivision (1); and

(B) recommendations regarding reasonable monitoring to observe the effects of brackish groundwater production within the zone.

Added by Acts 2003, 78th Leg., ch. 49, Sec. 2, eff. May 15, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 990 (H.B. 30), Sec. 3, eff. June 19, 2015.

Reenacted by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 19.002, eff. September 1, 2017.

Sec. 16.061. STATE FLOOD PLAN. (a) Not later than September 1, 2024, and before the end of each successive five-year period after that date, the board shall prepare and adopt a comprehensive state flood plan that incorporates the regional flood plans approved under Section 16.062. The state flood plan must:

(1) provide for orderly preparation for and response to

flood conditions to protect against the loss of life and property;

(2) be a guide to state and local flood control policy; and

(3) contribute to water development where possible.

(b) The state flood plan must include:

(1) an evaluation of the condition and adequacy of flood control infrastructure on a regional basis;

(2) a statewide, ranked list of ongoing and proposed flood control and mitigation projects and strategies necessary to protect against the loss of life and property from flooding and a discussion of how those projects and strategies might further water development, where applicable;

(3) an analysis of completed, ongoing, and proposed flood control projects included in previous state flood plans, including which projects received funding;

(4) an analysis of development in the 100-year floodplain areas as defined by the Federal Emergency Management Agency; and

(5) legislative recommendations the board considers necessary to facilitate flood control planning and project construction.

(c) The board, in coordination with the commission, the Department of Agriculture, the General Land Office, the Parks and Wildlife Department, the Texas Division of Emergency Management, and the State Soil and Water Conservation Board, shall adopt guidance principles for the state flood plan that reflect the public interest of the entire state. The board shall review and revise the guidance principles, with input from the commission, the Department of Agriculture, the General Land Office, the Parks and Wildlife Department, the Texas Division of Emergency Management, and the State Soil and Water Conservation Board as necessary and at least every fifth year to coincide with the five-year cycle for adoption of a new state flood plan.

(d) On adoption of a state flood plan, the board shall deliver the plan to the:

(1) governor;

(2) lieutenant governor;

(3) speaker of the house of representatives; and

(4) appropriate legislative committees and legislative leadership.

Added by Acts 2019, 86th Leg., R.S., Ch. 565 (S.B. 8), Sec. 1, eff.

June 10, 2019.

Sec. 16.062. REGIONAL FLOOD PLANNING. (a) The board shall:

(1) designate flood planning regions corresponding to each river basin;

(2) provide technical and financial assistance to the flood planning groups; and

(3) adopt guidance principles for the regional flood plans, including procedures for amending adopted plans.

(b) In designating flood planning regions, the board may divide river basins to avoid having an impracticably large area for efficient planning in a flood planning region.

(c) The board shall designate representatives from each flood planning region to serve as the initial flood planning group. The initial flood planning group may then designate additional representatives to serve on the flood planning group. The initial flood planning group shall designate additional representatives if necessary to ensure adequate representation from the interests in its region, including the public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric generating utilities, river authorities, water districts, and water utilities. The flood planning group shall maintain adequate representation from those interests. In addition, the board, the commission, the General Land Office, the Parks and Wildlife Department, the Department of Agriculture, the State Soil and Water Conservation Board, and the Texas Division of Emergency Management each shall appoint a representative to serve as an ex officio member of each flood planning group.

(d) Each regional flood planning group shall hold public meetings as provided by board rule to gather from interested persons, including members of the public and other political subdivisions located in that county, suggestions and recommendations as to issues, provisions, projects, and strategies that should be considered for inclusion in a regional flood plan.

(e) Each flood planning group shall consider the information collected under Subsection (d) in creating a regional flood plan. A regional flood plan must:

(1) use information based on scientific data and updated mapping; and

(2) include:

(A) a general description of the condition and functionality of flood control infrastructure in the flood planning region;

(B) flood control projects under construction or in the planning stage;

(C) information on land use changes and population growth in the flood planning region;

(D) an identification of the areas in the flood planning region that are prone to flood and flood control solutions for those areas; and

(E) an indication of whether a particular flood control solution:

(i) meets an emergency need;

(ii) uses federal money as a funding component; and

(iii) may also serve as a water supply source.

(f) After a flood planning group prepares a regional flood plan, the group shall hold at least one public meeting in a central location in the flood planning region to accept comments on the regional flood plan. The flood planning group shall:

(1) cooperate with the board to determine what method of providing notice for the public meeting is most accessible to persons in the flood planning region; and

(2) publish, post, or otherwise disseminate notice of the public meeting according to the method described by Subdivision (1).

(g) The notice published, posted, or otherwise disseminated under Subsection (f) must contain:

(1) the date, time, and location of the public meeting or hearing;

(2) a summary of the regional flood plan;

(3) the name, telephone number, and address of a person to whom questions or requests for additional information may be submitted; and

(4) information on how the public may submit comments.

(h) After consideration of the comments received at the public meeting, the flood planning group shall adopt the regional flood plan and submit the adopted regional flood plan to the board. The board shall make a determination whether the regional flood plan:

(1) satisfies the requirements for regional flood plans adopted in the guidance principles described by Subsection (a);

(2) adequately provides for the preservation of life and property and the development of water supply sources, where applicable; and

(3) affects a neighboring area.

(i) If the board makes a determination that an element of a regional flood plan negatively affects a neighboring area, the board must coordinate with the affected area to adjust the plan to ensure that no neighboring area is negatively affected by the plan.

(j) The board shall approve a regional flood plan when it:

(1) satisfies the requirements of Subsections (h)(1) and (2); and

(2) does not negatively affect a neighboring area.

(k) A flood planning group may amend a regional flood plan after the plan has been approved by the board according to rules adopted by the board.

(l) Each flood planning group and committee or subcommittee of a flood planning group is subject to Chapters 551 and 552, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 565 (S.B. 8), Sec. 1, eff. June 10, 2019.

SUBCHAPTER D. COOPERATION WITH FEDERAL GOVERNMENT

Sec. 16.091. DESIGNATION OF BOARD. The board is designated as the state agency to cooperate with the Corps of Engineers of the United States Army and the Bureau of Reclamation of the United States Department of the Interior in the planning of water resource development projects in this state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.047, eff. Sept. 1, 1985.

Sec. 16.092. LOCAL SPONSORS FOR PROJECTS. (a) When a project is proposed for planning or development by the board, the Corps of Engineers of the United States Army, or the Bureau of Reclamation of the United States Department of the Interior, any political subdivision may apply to the executive director for designation as the cooperating local sponsor of the project.

(b) In the application the applicant shall:

(1) describe the purposes of the project;

(2) state the reasons for the application, the contemplated use of water the applicant might derive from the project if a permit for the use is subsequently granted by the commission; and

(3) cite the contributions the applicant is prepared to make to the planning or development of the project.

(c) No application for designation as a local sponsor shall cover more than one proposed project.

(d) The commission shall prescribe the form to be used in applications for designation as cooperating local sponsor. Before accepting the application, the commission may require that the applicant complete the prescribed form.

(e) Before making any designation of local sponsorship, the commission shall set the application for hearing and give public notice of the hearing. Any interested party may appear and be heard for or against the designation of the applicant as project sponsor.

(f) More than one cooperating local sponsor may be designated for each project, but each applicant must comply with the provisions of this section.

(g) After a public hearing, the commission, by written order, shall grant or reject the application and shall state its reasons. The commission may set a reasonable time period for any sponsorship designation.

(h) In granting any future permit for use of water stored in a project for which it has designated a local sponsor, the commission shall fully recognize that sponsor's contributions to the planning and development of the project.

(i) To the extent that no local cooperator is prepared to undertake local sponsorship of a federal project in whole or part or to the extent that the board has an interest in the project, the board may be designated as sponsor of the project or as an additional cooperating sponsor.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.048, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 20, Sec. 2, eff. Sept. 1, 1987.

Sec. 16.093. PARTICIPATION IN FEDERAL PROGRAMS. (a) The board

may execute agreements with the United States Environmental Protection Agency or its successor agency and any other federal agency that administers programs providing federal grants, loans, or other assistance to local or state governments or other persons for water supply projects, treatment works, or structural or nonstructural flood control measures, as those terms are defined by Section 17.001. The board may exercise all duties and responsibilities required for the administration by the board of a federal program described by this subsection.

(b) The executive administrator, with the approval of the board, may execute agreements with the United States Environmental Protection Agency or its successor agency and any other federal agency for activities described by Subsection (a).

(c) The board may accept and use federal funds for the purposes provided by Subsection (a).

Added as Sec. 21.101 by Acts 1977, 65th Leg., p. 253, ch. 120, Sec. 1, eff. Aug. 29, 1977. Renumbered from Sec. 26.048 and amended by Acts 1987, 70th Leg., ch. 977, Sec. 25, eff. June 19, 1987.
Amended by:

Acts 2005, 79th Leg., Ch. 21 (H.B. 1657), Sec. 1, eff. May 9, 2005.

SUBCHAPTER E. ACQUISITION AND DEVELOPMENT OF FACILITIES

Sec. 16.131. AUTHORIZED PROJECTS FOR STATE PARTICIPATION ACCOUNT. (a) The board may use the state participation account of the development fund to encourage optimum regional and interregional development of projects including the design, acquisition, lease, construction, reconstruction, development, or enlargement in whole or part of:

(1) reservoirs and storm water retention basins for water supply, flood protection, and groundwater recharge;

(2) facilities for the transmission and treatment of water;

(3) treatment works as defined by Section 17.001; and

(4) interregional water supply projects selected under Section 16.145.

(b) The board may not use the state participation account of the development fund to finance a project recommended through the state and regional water planning processes under Sections 16.051 and

16.053 if the applicant has failed to satisfactorily complete a request by the executive administrator or a regional planning group for information relevant to the project, including a water infrastructure financing survey under Section 16.053(q).

(c) Not less than 50 percent of money used from the state participation account of the development fund in any fiscal year must be used for interregional water projects selected under Section 16.145.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 2.15; Acts 1987, 70th Leg., ch. 1103, Sec. 10, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 891 (S.B. 370), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 983 (H.B. 1732), Sec. 3, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 752 (H.B. 1052), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 752 (H.B. 1052), Sec. 3, eff. September 1, 2019.

Sec. 16.1311. PRIORITY FOR WATER CONSERVATION. The board shall give priority to applications for funds for implementation of water supply projects in the state water plan by entities that:

(1) have already demonstrated significant water conservation savings; or

(2) will achieve significant water conservation savings by implementing the proposed project for which the financial assistance is sought.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.16, eff. September 1, 2007.

Sec. 16.132. JOINT VENTURES. The board may act singly or in a joint venture in partnership with any person or entity, including any agency or political subdivision of this state, or with another state or its political subdivisions, or with the United States, or with a foreign nation, to the extent permitted by law.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.133. PERMITS REQUIRED. Except as provided by Section 16.1331 of this code, the board shall obtain permits from the commission for the storage, transportation, and application to beneficial use of water in reservoirs and associated works constructed by the board.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 4.04.

Sec. 16.1331. RESERVATION AND APPROPRIATION FOR BAYS AND ESTUARIES AND INSTREAM USES. (a) Five percent of the annual firm yield of water in any reservoir and associated works constructed with state financial participation under this chapter within 200 river miles from the coast, to commence from the mouth of the river thence inland, is appropriated to the Parks and Wildlife Department for use to make releases to bays and estuaries and for instream uses, and the commission shall issue permits for this water to the Parks and Wildlife Department under procedures adopted by the commission.

(b) The Parks and Wildlife Department in cooperation with the commission shall manage this water for the purposes stated in this section.

(c) The Parks and Wildlife Department shall adopt necessary rules and shall enter into necessary memoranda of understanding with the commission to provide necessary rules and procedures for managing the water and for release of the water for the purposes stated in this section.

(d) This section applies only to reservoirs and associated works on which construction begins on or after September 1, 1985.

(e) This section does not limit or repeal any other authority of or law relating to the commission.

(f) Operating and maintenance costs for the percentage of annual firm yield appropriated to the Parks and Wildlife Department shall be paid by local political subdivisions that are the project owners.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 4.04. Amended by Acts

1995, 74th Leg., ch. 76, Sec. 11.288, eff. Sept. 1, 1995.

Sec. 16.134. STORING WATER. The board may use any reservoir acquired, leased, constructed, reconstructed, developed, or enlarged by it under this chapter to store unappropriated state water and other water acquired by the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.1341. PAYMENT FOR RELEASES AND PASS-THROUGHS FROM STATE RESERVOIRS. (a) If the commission orders, for the purpose of maintaining the ecological health of any bay and estuary system, a release or pass-through of appropriated water from an existing reservoir owned in part by the board on September 1, 1985, the board shall pay the amount necessary to pay all maintenance and operating costs associated with the storage and release of the water.

(b) If the order under Subsection (a) of this section results in a dedication that reduces the reservoir's firm yield water supply capability, the board is responsible for repayment of that portion of the construction cost indebtedness associated with that dedication.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 4.001, eff. Sept. 1, 1985.

Sec. 16.135. BOARD FINDINGS. Before the board may acquire a facility or interest in a facility, the board shall find affirmatively that:

(1) it is reasonable to expect that the state will recover its investment in the facility;

(2) the cost of the facility exceeds the current financing capabilities of the area involved, and the optimum regional development of the facility cannot be reasonably financed by local interests without state participation;

(3) the public interest will be served by acquisition of the facility; and

(4) the facility to be constructed or reconstructed contemplates the optimum regional development which is reasonably

required under all existing circumstances of the site.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 2.15.

Sec. 16.1351. RECREATIONAL ACCESS. If the board is acquiring an interest in a storage facility, it must also find affirmatively that the applicant has a plan to provide adequate public recreational access areas to suitable recreational resources.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.22.

Sec. 16.136. FACILITIES WANTED BY POLITICAL SUBDIVISION. The board may acquire all or part of any authorized facility to the extent that the board finds that the political subdivision:

(1) is willing and reasonably able to finance that portion of the cost of the facility that the board does not acquire;

(2) has obtained all necessary permits;

(3) has proposals that are consistent with the objectives of the state water plan; and

(4) has complied with water conservation plan requirements as required by Section 16.4021.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 10, eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 1234, Sec. 26, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 8, eff. September 1, 2019.

Sec. 16.137. CONTRACTS: GENERAL AUTHORITY. (a) The board may execute contracts to the full extent that contracts are constitutionally authorized and not limited for the design, management, acquisition, lease, construction, reconstruction, development, enlargement, operation, or maintenance, singularly or in any combination, of any existing or proposed project.

(b) The board shall obtain the approval of the attorney general as to the legality of all contracts authorized under this subchapter

to which the board is a party.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.138. SPECIFIC CONTRACTS AUTHORIZED. Contracts authorized by Section 16.137 of this code shall include but are not limited to the following:

(1) contracts secured by the general credit of the state which shall constitute general obligations of the state in the same manner and with the same effect as water development bonds, and principal and interest on these contracts shall be paid in the manner provided for payment of principal and interest on state bonds by the constitution;

(2) federal grants or grants from other sources;

(3) contracts which may be fully or partially secured by water purchase or repayment contracts executed by political subdivisions of the state for purchase of water and facilities necessary to supply present and future regional and local water requirements;

(4) contracts with any person, including but not limited to the United States, local public agencies, power cooperatives, and investor-owned utilities, for financing, constructing, and operating facilities to operate and deliver pumping energy required for projects; and

(5) contracts for goods and services necessary for the design, management, acquisition, lease, construction, reconstruction, development, enlargement, implementation, operation, or maintenance of any existing or proposed project or portion of the project.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.139. CONTRACTS: FACILITIES ACQUIRED FOR A TERM OF YEARS. If facilities are acquired for a term of years, the board may include in the contract provisions for renewal that will protect the state's investment.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept.

1, 1977.

Sec. 16.140. MAINTENANCE CONTRACTS. The board may execute contracts for the operation and maintenance of the state's interest in any project and may agree to pay reasonable operation and maintenance charges allocable to the state interest.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.141. RECREATIONAL FACILITIES. The board may execute contracts with the United States and with state agencies and political subdivisions and with others to the extent authorized for the development and operation of recreational facilities at any project in which the state has acquired an interest. Income received by the board under these contracts may be used for the same purposes as income from the sale of water. The legislature may appropriate money for the development and operation of recreational facilities at projects in which the state has acquired an interest.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.142. RECOVERY OF ADMINISTRATIVE COSTS. (a) The board may charge an administrative fee to a political subdivision with which the board agrees to participate in a project under this subchapter.

(b) The board by rule shall set the fee at an amount it considers necessary to recover the costs incurred or to be incurred by the board in administering the project over its life, including the costs of processing an application, monitoring construction, and auditing and monitoring the project. The state auditor may review fees charged by the board to determine whether the fees are set consistent with this subsection, based on a risk assessment performed by the state auditor and subject to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code.

(c) The board may require the payment of the fee in one or more

payments.

(d) Fees shall be deposited as directed by the board for use in administering the program.

Added by Acts 1999, 76th Leg., ch. 1323, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 49, eff. Sept. 1, 2003.

Sec. 16.143. OPTION TO LEASE. (a) A former owner of real property used for agricultural purposes that was acquired, voluntarily or through the exercise of the power of eminent domain, for a reservoir whose site has been designated as unique for the construction of a reservoir under Section 16.051(g) is entitled to lease the property from the person who acquired the property under terms that allow the former owner to continue to use the property for agricultural purposes until the person who acquired the property determines that such use must be terminated to allow for the physical construction of the reservoir. Consistent with Subsection (b), the lease is subject to the terms and conditions set forth by the person who has acquired the property that are related to the use of the property by the former owner, including the term of the lease, the rent the former owner is required to pay under the lease, and the uses that may be allowed on the property during the term of the lease.

(b) A former owner of real property used for agricultural purposes is entitled to lease the property for the property's agricultural rental value until the person who acquired the property determines that the lease must be terminated to allow for the physical construction of the reservoir.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 3.02, eff. September 1, 2007.

Sec. 16.144. ENVIRONMENTAL MITIGATION. (a) If a person proposing to construct a reservoir whose site has been designated as unique for the construction of a reservoir under Section 16.051(g) is required to mitigate future adverse environmental effects arising from the construction or operation of the reservoir or its related facilities, the person shall, if authorized by the applicable

regulatory authority, attempt to mitigate those effects by offering to contract with and pay an amount of money to an owner of real property located outside of the reservoir site to maintain the property through an easement instead of acquiring the fee simple title to the property for that purpose.

(b) An owner of real property may reject an offer made under Subsection (a). If agreement on the terms of an easement under Subsection (a) cannot be reached by the parties after a good faith attempt and offer is made, then the party constructing the reservoir may obtain fee title to the property through voluntary or involuntary means.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 3.02, eff. September 1, 2007.

Sec. 16.145. INTERREGIONAL WATER SUPPLY PROJECTS. (a) The board shall identify, establish selection criteria for, and issue a request for proposals for water supply projects that benefit multiple water planning regions. Selection criteria established under this section must prioritize projects that:

(1) maximize the use of private financial resources;

(2) combine the financial resources of multiple water planning regions; and

(3) have a substantial economic benefit to the regions served by:

(A) affecting a large population;

(B) creating jobs in the regions served; and

(C) meeting a high percentage of the water supply needs of the water users served by the project.

(b) The board and the commission shall enter into a memorandum of understanding for the expedited approval of permits for projects selected under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 752 (H.B. 1052), Sec. 4, eff. September 1, 2019.

Sec. 16.146. AUTHORIZED PROJECTS FOR STATE PARTICIPATION ACCOUNT II. (a) The board may use the state participation account II created under Section 17.957 to provide financial assistance for

the development of a desalination or aquifer storage and recovery facility, including associated intake or distribution facilities, to meet existing or projected future water needs by acquiring such a facility or an ownership interest in such a facility.

(b) The board may act singly or in a joint venture in partnership with any person, including a public or private entity, an agency or political subdivision of this state, another state or a political subdivision of another state, the United States, or a foreign nation, to the extent permitted by law. The board may provide financial assistance under this section for a facility without regard to any requirements provided by board rules regarding the portion of the capacity of the facility that will serve an existing need or the portion of the cost of the facility that the applicant will finance from sources other than the state participation account II.

(c) Section 16.135 does not apply to the use of the state participation account II to develop a facility described by Subsection (a) of this section by acquiring the facility or an interest in the facility.

(d) Before the board may acquire a facility or an interest in a facility described by Subsection (a), the board must find affirmatively that:

(1) it is reasonable to expect that the state will recover its investment in the facility; and

(2) the public interest will be served by the acquisition of the facility.

(e) The board may not provide financial assistance under this section for a facility unless the facility is included in the state water plan.

(f) The board shall establish a point system for prioritizing facilities for which financial assistance is sought from the board under this section. The system must include a standard for the board to apply in determining whether a facility qualifies for financial assistance at the time the application for financial assistance is filed with the board.

(g) The board may not issue more than $200 million in water financial assistance bonds designated by the board as issued to provide financial assistance for facilities under this section.

(h) If the board does not provide financial assistance for a facility under this section from the state participation account II

before September 1, 2024, the board may not provide financial assistance for any facility from that account after that date.

Added by Acts 2019, 86th Leg., R.S., Ch. 752 (H.B. 1052), Sec. 4, eff. September 1, 2019.

SUBCHAPTER F. SALE OR LEASE OF FACILITIES

Sec. 16.181. BOARD MAY SELL OR LEASE PROJECTS. (a) The board may sell, transfer, or lease, to the extent of its ownership, a project acquired, constructed, reconstructed, developed, or enlarged with money from the state participation account.

(b) The board shall obtain the approval of the attorney general as to the legality of all contracts authorized under this subchapter to which the board is a party.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870 Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 2.16.

Sec. 16.182. PERMITS REQUIRED. (a) Before the board grants the application to buy, receive, or lease the facilities, the applicant shall first secure all appropriate permits from the commission. If the facilities are to be leased, a permit may be for a term of years.

(b) The board may assist the applicant with securing permits for a facility described by Section 16.146.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 752 (H.B. 1052), Sec. 5, eff. September 1, 2019.

Sec. 16.183. PERMIT: PARAMOUNT CONSIDERATION OF COMMISSION. In passing on an application for a permit under this subchapter whether it proposes a use of water inside or outside the watershed of the impoundment, the commission shall give paramount consideration to recouping the state's investment in order to protect the public interest and promote the general welfare.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.184. CONTRACT MUST BE NEGOTIATED. The commission shall not issue the permit until the applicant has executed a contract with the board for acquisition of the facilities.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.185. RESERVOIR LAND. The board may lease acquired reservoir land until construction of the dam is completed without the necessity of a permit issued by the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.186. PRICE OF SALE. (a) The price of the sale or transfer of a state facility acquired prior to September 1, 1977, other than a facility acquired under a contract with the United States, shall be the sum of the direct cost of acquisition, plus an amount of interest calculated when one-half of one percent is added to the weighted average effective interest rate in effect at the date of sale or transfer of the state facility times the amount of board money disbursed for the acquisition times the number of years and fraction of a year from the date or dates of purchase or acquisition to the date or dates of sale or transfer, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it. The board may negotiate with a purchaser a different interest rate for calculation of the price of sale if the board determines that establishment of a different interest rate would benefit the state and would expedite the sale of the board's interest in the facility.

(b) The price of the sale or transfer of a state facility acquired on or subsequent to September 1, 1977, other than a facility acquired under a contract with the United States, shall be the sum of the direct cost of acquisition, plus an amount of interest calculated

by multiplying the lending rate in effect at the date of acquisition by the amount of board money disbursed for the acquisition times the number of years and fraction of a year from the date or dates of the purchase or acquisition to the date or dates of the sale or transfer of the state facility, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it.

(c) The purchaser of the board's interest in a state facility shall also assume, to the extent disclosed by the board at or prior to the sale, any and all direct, conditional, or contingent liabilities of the board attributed to the project in direct relation to the percentage of the project acquired by the purchaser.

Amended by Acts 1977, 65th Leg., p. 671, ch. 254, Sec. 2, eff. May 25, 1977. Renumbered from 11.356 by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 307, Sec. 1, eff. June 14, 1989.

Sec. 16.187. PRICE OF SALE: FACILITIES ACQUIRED UNDER CONTRACTS WITH THE UNITED STATES. (a) The price of the sale or transfer of a facility acquired prior to September 1, 1977, under a contract with the United States shall be the sum of the direct cost of acquisition, plus an amount of interest calculated by adding one-half of one percent to the weighted average effective interest rate in effect at the date of the sale or transfer of the state facility times the amount of board money disbursed for the acquisition times the number of years and fraction of a year for which the board paid interest to the other party to the contract, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it.

(b) The price of the sale or transfer of a state facility acquired on or subsequent to September 1, 1977, under a contract with the United States shall be the sum of the direct cost of acquisition, plus an amount of interest calculated by multiplying the lending rate in effect at the time of acquisition by the amount of board money disbursed for the acquisition of the facility times the number of

years and fraction of a year from the date or dates of purchase or acquisition to the date or dates of sale or transfer, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer of the facility, less any payments received by the board from the lease of the facility or the sale of water from it.

(c) If, in transferring any contract, the board remains in any way directly, conditionally, or contingently liable for the performance of any part of the contract, then the transferee, in addition to the payments prescribed by Subsection (a) or (b) of this section, as applicable, shall pay to the board annually one-half of one percent of the remaining amount owed to the other party to the contract, and shall continue these payments until the board is fully released from the contract.

Amended by Acts 1977, 65th Leg., p. 671, ch. 254, Sec. 2, eff. May 25, 1977. Renumbered from 11.357 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.1871. ACQUISITION DATE. (a) If the board has made an initial payment prior to September 1, 1977, to acquire a state facility, other than a facility acquired under a contract with the United States, the state facility shall be deemed to have been acquired prior to September 1, 1977, for purposes of Section 16.186 of this code. If the board makes its initial payment on or after September 1, 1977, to acquire a state facility, other than a facility acquired under a contract with the United States, the state facility shall be deemed to have been acquired on or after September 1, 1977, for purposes of Section 16.186 of this code.

(b) If the board has executed a contract with the United States prior to September 1, 1977, to purchase a state facility, the state facility shall be deemed to have been acquired prior to September 1, 1977, for purposes of Section 16.187 of this code. If the board executes a contract with the United States on or after September 1, 1977, to purchase a state facility, the state facility shall be deemed to have been acquired on or after September 1, 1977, for purposes of Section 16.187 of this code.

Added by Acts 1977, 65th Leg., p. 673, ch. 254, Sec. 3, eff. May 25, 1977. Renumbered from Sec. 11.3571 and amended by Acts 1987, 70th

Leg., ch. 977, Sec. 7, eff. June 19, 1987.

Sec. 16.188. COSTS DEFINED. With reference to the sale of a state facility, "direct cost of acquisition" means the principal amount the board has paid or agreed to pay for a facility up to the date of sale, but does not include the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer of the facility.

Amended by Acts 1977, 65th Leg., p. 671, ch. 254, Sec. 2, eff. May 25, 1977. Renumbered from 11.358 by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.189. LEASE PAYMENTS. In leasing a state facility for a term of years, the board shall require payments that will recover over the lease period not less than the total of:

(1) all principal and interest requirements applicable to the debt incurred by the state in acquiring the facility; and

(2) the state's cost for operation, maintenance, and rehabilitation of the facility.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1010, Sec. 5.02, eff. Sept. 1, 1997.

Sec. 16.190. SALE OR LEASE: CONDITION PRECEDENT. (a) No sale, transfer, or lease of a state facility is valid unless the board first makes the following affirmative findings:

(1) that the applicant has a permit granted by the commission;

(2) that the sale, transfer, or lease will contribute to the conservation and development of the water resources of the state; and

(3) that the consideration for the sale, transfer, or lease is fair, just, and reasonable and in full compliance with the law.

(b) The consideration for any such sale or transfer may be either money or revenue bonds, which revenue bonds for the purposes hereof shall be deemed the same as money.

(c) The amount of money shall be equal to the price for purchasing the facilities as prescribed by the provisions of Section 16.187 of this code, or if revenue bonds constitute the consideration, the principal amount of revenue bonds shall be equal to the price for purchasing the facilities as prescribed by the provisions of Section 16.187 of this code, and such revenue bonds shall bear interest at the rate prescribed in Section 17.128 of this code with regard to bonds purchased with the proceeds of the Texas Water Development Fund.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.191. DISPOSITION OF PROCEEDS. (a) The money received from any sale, transfer, or lease of facilities as cash, or in the case of a sale or transfer involving revenue bonds, the money received as matured interest or principal on the bonds shall be used to pay the principal of and interest on water development bonds or to meet contractual obligations incurred by the board. The money shall be collected and credited to the proper special fund as is money received in payment of principal and interest on loans to political subdivisions under this code, taking into consideration the manner in which the facilities were acquired.

(b) When enough money has been collected to pay all outstanding indebtedness, including the principal of all state bonds and contractual obligations and the full amount of interest to accrue on these debts, the board may use any further amounts received from the sale, transfer, or lease of facilities to acquire additional facilities or to provide assistance to political subdivisions for water supply projects.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.192. SALE OF STORED WATER. The board may sell any unappropriated public water of the state and other water acquired by the state that is stored by or for it. The price will be determined by the board.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.193. PERMIT. (a) The board may not sell the water stored in a facility to any person who has not obtained a permit from the commission. The rights of the applicant in the water are governed by the terms and conditions of the permit. The permit may be for a term of years.

(b) Whether the application for a permit involves a proposed use of water inside or outside the watershed of the impoundment, the commission shall give paramount consideration to recouping the state's investment in order to protect the public interest and promote the general welfare.

(c) The permit shall be conditioned on continued payment of the obligations assumed under the contract with the board and may provide for cancellation at any time on breach of the contract.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.194. SALE CONTRACT: PROVISIONS, LIMITATIONS. (a) The board may determine the consideration and other provisions to be included in water sale contracts, but the consideration and other provisions shall be fair, reasonable, and nondiscriminatory. The board may include charges for standby service, which means holding water and conservation storage space for use and for actual delivery of water.

(b) The board shall make the same determinations with respect to the sale of water as are required in Section 16.190 of this code with respect to the sale or lease of facilities.

(c) The board shall not compete with any political subdivision in the sale of water when this competition jeopardizes the ability of the political subdivision to meet obligations incurred to finance its own water supply projects.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.195. EMERGENCY RELEASES OF WATER. Unappropriated water and other water of the state stored in any facility acquired by and under the control of the board may be released without charge to relieve any emergency condition arising from drought, severe water shortage, or public calamity, if the commission first determines the existence of the emergency and requests the board to release water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.196. PREFERENCES. The board shall give political subdivisions a preferential right, but not an exclusive right, to purchase, acquire, or lease facilities and to purchase water from facilities. Preferences shall be given in these respects in accord with the provisions of Section 11.123 of this code relating to preferences in the appropriation and use of state water. The board and the commission shall coordinate their efforts to meet these objectives and to assure that the public water of this state, which is held in trust for the use and benefit of the public, will be conserved, developed, and utilized in the greatest practicable measure for the public welfare.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.197. LEASE OF LAND PRIOR TO PROJECT CONSTRUCTION. The board may lease tracts of land acquired for project purposes for a term of years for any purpose not inconsistent with ultimate project construction. The lease shall be scheduled to expire before initiation of project construction.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.198. LEASE CONTRIBUTIONS EQUIVALENT TO TAXES. The lease may provide for contribution by the lessee to units of local government of amounts equivalent to ad valorem taxes or special assessments.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER G. IMPROVEMENTS

Sec. 16.231. DESIGN OF IMPROVEMENTS OR SYSTEM OF IMPROVEMENTS. Insofar as possible, improvements necessary to reclaim overflowed land, swampland, and other land in this state that is not suitable for use because of temporary or permanent excessive accumulation of water on or contiguous to the land for agricultural or other use shall be designed with primary consideration to the topographic and hydrographic conditions and in such a manner that each division of a project shall be a complete, united project forming a coordinate part of an ultimately finished series of projects so constituted that the successful operation of each united project shall coordinate with the successful operation of other projects within the same hydraulic influence.

Formerly Sec. 16.233, amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Renumbered and amended by Acts 1981, 67th Leg., p. 3156, ch. 828, Sec. 8, eff. June 17, 1981.

Sec. 16.232. LOCATION OF PROJECTS; REPORTS. The executive director shall maintain files reflecting engineering reports, studies, drawings, and staff findings and recommendations pertaining to the location and effect of reclamation projects.

Formerly Sec. 16.234, amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Renumbered and amended by Acts 1981, 67th Leg., p. 3156, ch. 828, Sec. 8, eff. June 17, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.049, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 16, eff. June 19, 1987.

Sec. 16.233. COOPERATION WITH OTHER AGENCIES. In performing functions that are a part of duties assigned to the commission or board by this code or other law, the executive director, with the approval of the commission, or the executive administrator, with the approval of the board, may confer with federal and state agencies and with political subdivisions and may execute cooperative agreements

with them. The executive director or executive administrator may cancel any such agreement on 10 days notice to the other party.

Formerly Sec. 16.235, amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Renumbered by Acts 1981, 67th Leg., p. 3156, ch. 828, Sec. 8, eff. June 17, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.049, eff. Sept. 1, 1985.

Sec. 16.234. ADVICE TO DISTRICTS. The executive director shall confer with districts requesting technical advice on the adequate execution of proposed levee and drainage improvements.

Formerly Sec. 16.236, amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Renumbered by Acts 1981, 67th Leg., p. 3156, ch. 828, Sec. 8, eff. June 17, 1981.

Sec. 16.235. DISTRICTS TO FILE INFORMATION WITH COMMISSION. Immediately before having its bonds approved by the attorney general, each drainage district and levee improvement district shall file with the commission, on forms furnished by the commission, a complete record showing each step in the organization of the district, the amount of bonds to be issued, and a description of the area and boundaries of the district, accompanied by plans, maps, and profiles of improvements and the district engineer's estimates and reports on them.

Formerly Sec. 16.237, amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Renumbered by Acts 1981, 67th Leg., p. 3156, ch. 828, Sec. 8, eff. June 17, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.049, eff. Sept. 1, 1985.

Sec. 16.236. CONSTRUCTION OF LEVEE WITHOUT APPROVAL OF PLANS; LEVEE SAFETY. (a) No person may construct, attempt to construct, cause to be constructed, maintain, or cause to be maintained any levee or other such improvement on, along, or near any stream of this state that is subject to floods, freshets, or overflows so as to control, regulate, or otherwise change the floodwater of the stream without first obtaining approval of the plans by the commission.

(b) The commission shall make and enforce rules and orders and shall perform all other acts necessary to provide for the safe construction, maintenance, repair, and removal of levees located in this state.

(c) If the owner of a levee that is required to be constructed, reconstructed, repaired, or removed to comply with the rules and orders promulgated under this section wilfully fails or refuses to comply within the 30-day period following the date of an order of the commission requiring such action or compliance or if a person wilfully fails to comply with any rule or order issued by the commission under this section within the 30-day period following the effective date of the order, the person is liable for a penalty of not more than $1,000 a day for each day the person continues to violate this section. The state may recover the penalty by suit brought for that purpose in a district court of Travis County.

(d) If the commission determines that the existing condition of a levee is creating or will cause extensive or severe property damage or economic loss to others or is posing an immediate and serious threat to human life or health and that other procedures available to the commission to remedy or prevent such property damage or economic loss will result in unreasonable delay, the commission may issue an emergency order, either mandatory or prohibitory in nature, directing the owner of the levee to repair, modify, maintain, dewater, or remove the levee which the commission determines is unsafe. The emergency order may be issued without notice to the levee owner or with notice the commission considers practicable under the circumstances.

(e) If the commission issues an emergency order under authority of this section without notice to the levee owner, the commission shall fix a time and place for a hearing, to be held as soon as practicable but not later than 20 days after the emergency order is authorized, to affirm, modify, or set aside the emergency order. If the nature of the commission's action requires further proceedings, those proceedings shall be conducted, as appropriate, under Chapter 2001, Government Code.

(f) Nothing in this section or in rules or orders adopted by the commission shall be construed to relieve an owner or operator of a levee of the legal duties, obligations, or liabilities incident to ownership or operation.

(g) Any person who violates any provision of Subsection (a) of

this section is guilty of a Class C misdemeanor and upon conviction is punishable by a fine of not more than $1,000. A separate offense is committed each day a structure constructed in violation of this section is maintained.

(h) Subsection (a) of this section does not apply to:

(1) any dam, reservoir, or canal system associated with a water right issued or recognized by the commission;

(2) dams authorized by Section 11.142 of this code;

(3) a levee or other improvement within the corporate limits of a city or town provided: (a) plans for the construction or maintenance or both must be approved by the city or town as a condition precedent to starting the project and (b) the city or town requires that such plans be in substantial compliance with rules and standards adopted by the commission;

(4) a levee or other improvement within the boundaries of any political subdivision which has qualified for the National Flood Insurance Program as authorized by the National Flood Insurance Act of 1968 (Title 42, U.S.C., Sections 4001-4127) provided: (a) plans for the construction or maintenance or both must be approved by the political subdivision which is participating in the national flood insurance program as a condition precedent to starting the project and (b) the political subdivision requires that such plans be in substantial compliance with rules and standards adopted by the commission;

(5) projects implementing soil and water conservation practices set forth in a conservation plan with a landowner or operator and approved by the governing board of a soil and water conservation district organized under the State Soil Conservation Law, as amended (Article 165a-4, Vernon's Texas Civil Statutes), provided that the governing board finds the practices do not significantly affect stream flooding conditions on, along, or near a state stream; or

(6) any levee or other improvement constructed outside of the 100-year floodway. For the purposes of this section, "100-year floodway" is defined as the channel of a stream and the adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot above the 100-year flood elevation prior to encroachment.

(i) On projects located within the corporate limits of a city or town or within the boundaries of any political subdivision which

are exempt from the provisions of Subsection (a) of this section by Subdivision (3) or (4) of Subsection (h) of this section, any person whose property is located outside of the corporate limits of such city or town or of the boundaries of such a political subdivision and whose property is affected or potentially affected by the effect of the project on the floodwaters of the stream may appeal the decision of such political subdivision. The appeal shall be in writing and shall specify the grounds therefor and a copy shall be sent by certified mail to the project applicant and to the city or town or such political subdivision. The timely filing of such an appeal with the executive director suspends the decision of the city or town or political subdivision until a final decision is rendered by the commission. The executive director shall review the complaint and investigate the facts surrounding the nature of the complaint. If the executive director finds that the complaint is frivolous or nonmeritorious or made solely for purposes of harassment or delay, then he shall dismiss the appeal. Otherwise, the executive director shall refer the appeal to the commission which shall after due notice hold a hearing to determine whether the project should be approved using the standards established by the commission and shall hear such appeal de novo under the procedural rules established by the commission for other reclamation projects.

Formerly Sec. 16.238, amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1375, ch. 615, Sec. 1, eff. Aug. 27, 1979. Renumbered by Acts 1981, 67th Leg., p. 3156, ch. 828, Sec. 8, eff. June 17, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.050, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 3.05, eff. Sept. 1, 1997.

Sec. 16.237. ADMINISTRATIVE PENALTY; CIVIL REMEDY. (a) If a person violates a commission rule or order adopted under Section 16.236 of this code, the commission may assess an administrative penalty against that person as provided by Section 11.0842 of this code.

(b) Nothing in this chapter affects the right of any private corporation, individual, or political subdivision that has a justiciable interest in pursuing any available common-law remedy to enforce a right or to prevent or seek redress or compensation for the

violation of a right or otherwise redress an injury.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 3.06, eff. Sept. 1, 1997.

SUBCHAPTER H. NAVIGATION FACILITIES

Sec. 16.271. IMPROVEMENT OF STREAMS AND CANALS AND CONSTRUCTION OF FACILITIES WITHIN CYPRESS CREEK DRAINAGE BASIN. The board may improve streams and canals and construct all waterways and other facilities necessary to provide for navigation within the Cypress Creek drainage basin which is located in the northeast portion of the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.272. LONG-TERM CONTRACTS WITH THE UNITED STATES. The board may execute long-term contracts with the United States or any of its agencies for the acquisition and development of improvements and facilities under Section 16.271 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.273. TEMPORARY AUTHORITY TO ACT FOR DISTRICT. The board may act in behalf of a local district or districts until they can take over the project or projects in accordance with the board's agreement with the district or districts in acting as the sponsor.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER I. FLOOD INSURANCE

Sec. 16.311. SHORT TITLE. This subchapter may be cited as the Flood Control and Insurance Act.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept.

1, 1977.

Sec. 16.312. PURPOSE. The State of Texas recognizes the personal hardships and economic distress caused by flood disasters since it has become uneconomic for the private insurance industry alone to make flood insurance available to those in need of such protection on reasonable terms and conditions. Recognizing the burden of the nation's resources, congress enacted the National Flood Insurance Act of 1968, as amended (42 U.S.C. Sections 4001 through 4127), whereby flood insurance can be made available through coordinated efforts of the federal government and the private insurance industry, by pooling risks, and the positive cooperation of state and local government. The purpose of this subchapter is to evidence a positive interest in securing flood insurance coverage under this federal program and to so procure for those citizens of Texas desiring to participate and in promoting the public interest by providing appropriate protection against the perils of flood losses and in encouraging sound land use by minimizing exposure of property to flood losses.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 16.313. DEFINITIONS. In this subchapter:

(1) "Political subdivision" means any political subdivision or body politic and corporate of the State of Texas and includes any county, river authority, conservation and reclamation district, water control and improvement district, water improvement district, water control and preservation district, fresh water supply district, irrigation district, and any type of district heretofore or hereafter created or organized or authorized to be created or organized pursuant to the provisions of Article XVI, Section 59 or Article III, Section 52 of the Constitution of the State of Texas; "political subdivision" also means any interstate compact commission to which the State of Texas is a party, municipal corporation, or city whether operating under the Home Rule Amendment of the Constitution or under the General Law.

(2) "National Flood Insurance Act" means the National Flood

Insurance Act of 1968, as amended (42 U.S.C. Sections 4001 through 4127), and the implementation and administration of the Act by the director of the Federal Emergency Management Agency.

(3) "Director" means the director of the Federal Emergency Management Agency.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 258, Sec. 1, eff. Sept. 1, 2001.

Sec. 16.314. COOPERATION OF BOARD. In recognition of the necessity for a coordinated effort at all levels of government, the board shall cooperate with the Federal Emergency Management Agency in the planning and carrying out of state participation in the National Flood Insurance Program; however, the responsibility for qualifying for the National Flood Insurance Program shall belong to any interested political subdivision, whether presently in existence or created in the future.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.051, eff. Sept. 1. 1985; Acts 2001, 77th Leg., ch. 258, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. 1436), Sec. 4, eff. September 1, 2007.

Sec. 16.3145. NATIONAL FLOOD INSURANCE PROGRAM ORDERS OR ORDINANCES. The governing body of each city and county shall adopt ordinances or orders, as appropriate, necessary for the city or county to be eligible to participate in the National Flood Insurance Program.

Added by Acts 1999, 76th Leg., ch. 1360, Sec. 1, eff. Aug. 30, 1999.

Sec. 16.315. POLITICAL SUBDIVISIONS; COMPLIANCE WITH FEDERAL REQUIREMENTS. All political subdivisions are hereby authorized to take all necessary and reasonable actions that are not less stringent than the requirements and criteria of the National Flood Insurance Program, including but not limited to:

(1) making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses;

(2) guiding the development of proposed future construction, where practicable, away from a location which is threatened by flood hazards;

(3) assisting in minimizing damage caused by floods;

(4) authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;

(5) engaging in floodplain management, adopting and enforcing permanent land use and control measures that are not less stringent than those established under the National Flood Insurance Act, and providing for the imposition of penalties on landowners who violate this subchapter or rules adopted or orders issued under this subchapter;

(6) declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the director, or whomever the director designates, of such property;

(7) consulting with, giving information to, and entering into agreements with the Federal Emergency Management Agency for the purpose of:

(A) identifying and publishing information with respect to all flood areas, including coastal areas; and

(B) establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;

(8) cooperating with the director's studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(9) taking steps, using regional, watershed, and multi-objective approaches, to improve the long-range management and use of flood-prone areas;

(10) purchasing, leasing, and receiving property from the director when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Federal Emergency Management Agency or other

appropriate legal representative of the United States Government;

(11) requesting aid pursuant to the entire authorization from the board;

(12) satisfying criteria adopted and promulgated by the board pursuant to the National Flood Insurance Program;

(13) adopting permanent land use and control measures with enforcement provisions that are not less stringent than the criteria for land management and use adopted by the director;

(14) adopting more comprehensive floodplain management rules that the political subdivision determines are necessary for planning and appropriate to protect public health and safety;

(15) participating in floodplain management and mitigation initiatives such as the National Flood Insurance Program's Community Rating System, Project Impact, or other initiatives developed by federal, state, or local government; and

(16) collecting reasonable fees to cover the cost of administering a local floodplain management program.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.051, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 258, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. 1436), Sec. 5, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.17, eff. September 1, 2007.

Sec. 16.316. COORDINATION OF LOCAL, STATE, AND FEDERAL PROGRAMS BY BOARD. (a) The board shall aid, advise, and coordinate the efforts of present and future political subdivisions endeavoring to qualify for participation in the National Flood Insurance Program.

(b) Pursuant to the National Flood Insurance Program and state and local efforts complementing the program, the board shall aid, advise, and cooperate with political subdivisions, the Texas Department of Insurance, and the Federal Emergency Management Agency when aid, advice, and cooperation are requested or deemed advisable by the board.

(c) The aforementioned aid may include but is not necessarily limited to:

(1) coordinating local, state, and federal programs relating to floods, flood losses, and floodplain management;

(2) evaluating the present structure of all federal, state, and political subdivision flood control programs within or adjacent to the state, including an assessment of the extent to which public and private floodplain management activities have been instituted;

(3) carrying out studies with respect to the adequacy of present public and private measures, laws, regulations, and ordinances in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(4) evaluating all available engineering, hydrologic, and geologic data relevant to flood-prone areas and flood control in those areas;

(5) carrying out floodplain studies and mapping programs of floodplains, flood-prone areas, and flood-risk zones;

(6) encouraging the Federal Emergency Management Agency to evaluate flood-prone areas by river basin and river system;

(7) coordinating the use of federal, state, and local grant money;

(8) making floodplain maps and floodplain information accessible to the public, including in an electronic format through the board's Internet website; and

(9) maintaining at least one staff member in each of the board's field offices to encourage participation in the National Flood Insurance Program by performing education and outreach and coordinating the efforts of political subdivisions.

(d) On the basis of such studies and evaluations, the board, to the extent of its capabilities, shall periodically identify and publish information and maps with respect to all floodplain areas, including the state's coastal area, which have flood hazards, and where possible aid the federal government in identifying and establishing flood-risk zones in all such areas.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.051, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 258, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. 1436), Sec. 6, eff. September 1, 2007.

Sec. 16.317. COOPERATION OF TEXAS DEPARTMENT OF INSURANCE. Pursuant to the National Flood Insurance Program, the Texas Department of Insurance shall aid, advise, and cooperate with political subdivisions, the board, and the Federal Emergency Management Agency when such aid, advice, and cooperation are requested or deemed advisable by the Texas Department of Insurance.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.051, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 258, Sec. 4, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. 1436), Sec. 8, eff. September 1, 2007.

Sec. 16.318. RULES. Political subdivisions which qualify for the National Flood Insurance Program, the Texas Department of Insurance, and the board may adopt and promulgate reasonable rules which are necessary for the orderly effectuation of the respective authorizations herein.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.051, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 258, Sec. 4, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. 1436), Sec. 9, eff. September 1, 2007.

Sec. 16.319. QUALIFICATION. Political subdivisions wishing to qualify under the National Flood Insurance Program shall have the authority to do so by complying with the directions of the Federal Emergency Management Agency and by:

(1) evidencing to the director a positive interest in securing flood insurance coverage under the National Flood Insurance Program; and

(2) giving to the director satisfactory assurance that measures will have been adopted for the political subdivision that will be not less stringent than the comprehensive criteria for land management and use developed by the Federal Emergency Management Agency.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., 1st C.S., p. 58, ch. 4, Sec. 3, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 258, Sec. 4, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. 1436), Sec. 9A, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.17, eff. September 1, 2007.

Sec. 16.320. COASTAL EROSION. The Commissioner of the General Land Office is authorized to perform all acts necessary to develop and implement a program for certification of structures subject to imminent collapse due to erosion under the National Flood Insurance Act. This program shall include administrative rules adequate to meet all erosion-related requirements of the National Flood Insurance Act, including the establishment of required erosion zones in order for the state to receive approval to administer the program. This section shall apply to any amendment of or law replacing Section 4013(c) of the National Flood Insurance Act. Except as otherwise provided by this section, all actions taken by political subdivisions under Section 16.315 of this code with respect to structures in imminent danger of collapse from coastal erosion must comply with rules and regulations adopted by the commissioner under this section. A political subdivision may adopt rules that are more stringent than those adopted by the commissioner under this section, provided the stricter provisions are intended to ensure compliance with the National Flood Insurance Program's rules, regulations, and policies.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 38, eff. June 7, 1991.
Amended by Acts 1997, 75th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 258, Sec. 4, eff. Sept. 1, 2001.

Sec. 16.321. COASTAL FLOODING. The Commissioner of the General Land Office shall adopt and enforce reasonable rules and regulations necessary for protection from flooding on barrier islands, peninsulas, and mainland areas fronting on the Gulf of Mexico. Rules and regulations adopted pursuant to this section shall be limited to

those matters that political subdivisions are authorized to address under Section 16.315 of this code. Except as otherwise provided by this section, all actions taken by political subdivisions under Section 16.315 of this code with respect to flooding on barrier islands, peninsulas, and mainland areas fronting on the Gulf of Mexico must comply with rules and regulations adopted by the commissioner under this section. A political subdivision may adopt rules that are more stringent than those adopted by the commissioner under this section, provided the stricter provisions are intended to ensure compliance with the National Flood Insurance Program's rules, regulations, and policies.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 39, eff. June 7, 1991. Amended by Acts 1997, 75th Leg., ch. 460, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 258, Sec. 4, eff. Sept. 1, 2001.

Sec. 16.322. CIVIL PENALTY. A person who violates this subchapter or a rule adopted or order issued under this subchapter is subject to a civil penalty of not more than $100 for each act of violation and for each day of violation.

Added by Acts 1997, 75th Leg., ch. 1346, Sec. 1, eff. Sept. 1, 1997.

Sec. 16.3221. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter.

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

(c) Each violation of this subchapter and each day of a continuing violation is a separate offense.

Added by Acts 2001, 77th Leg., ch. 258, Sec. 5, eff. Sept. 1, 2001.

Sec. 16.323. ENFORCEMENT BY POLITICAL SUBDIVISION. (a) If it appears that a person has violated, is violating, or is threatening to violate this subchapter or a rule adopted or order issued under this subchapter, a political subdivision may institute a civil suit in the appropriate court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation, including an order

directing the person to remove illegal improvements and restore preexisting conditions;

(2) the assessment and recovery of the civil penalty provided by Section 16.322; or

(3) both the injunctive relief and the civil penalty.

(b) On application for injunctive relief and a finding that a person has violated, is violating, or is threatening to violate this subchapter or a rule adopted or order issued under this subchapter, the court shall grant the injunctive relief that the facts warrant.

Added by Acts 1997, 75th Leg., ch. 1346, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 124, Sec. 1, eff. May 20, 1999; Acts 2001, 77th Leg., ch. 258, Sec. 6, eff. Sept. 1, 2001.

Sec. 16.324. COUNTY AUTHORITY TO SET FEE. The commissioners court of a county may set a reasonable fee for the county's issuance of a permit authorized by this subchapter for which a fee is not specifically prescribed. The fee must be set and itemized in the county's budget as part of the budget preparation process.

Added by Acts 2001, 77th Leg., ch. 951, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER J. ECONOMICALLY DISTRESSED AREAS

Sec. 16.341. DEFINITIONS. In this subchapter:

Text of subdivision as amended by Acts 2005, 79th Leg., R.S., Ch. 708 (S.B. 425), Sec. 15

(1) "Affected county" means a county:

(A) that has a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available;

(B) that is adjacent to an international border; or

(C) that is located in whole or in part within 100 miles of an international border and contains the majority of the area of a municipality with a population of more than 250,000.

Text of subdivision as amended by Acts 2005, 79th Leg., R.S., Ch. 927 (H.B. 467), Sec. 2

(1) "Affected county" means a county that has an economically distressed area which has a median household income that is not greater than 75 percent of the median state household income.

(2) "Economically distressed area" has the meaning assigned by Section 17.921.

(3) "Political subdivision" means an affected county, a municipality located in an affected county, a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, located in an affected county, or a nonprofit water supply corporation created and operating under Chapter 67, located in an affected county, that receives funds for facility engineering under Section 15.407 or financial assistance under Subchapter K, Chapter 17, or an economically distressed area in an affected county for which financial assistance is received under Subchapter C, Chapter 15.

(4) "Sewer services" or "sewer facilities" means treatment works as defined by Section 17.001 of this code or individual, on-site, or cluster treatment systems such as septic tanks and includes drainage facilities and other improvements for proper functioning of septic tank systems.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.59, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 404, Sec. 33, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 15, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 2, eff. September 1, 2005.

Sec. 16.342. RULES. (a) The board shall adopt rules that are necessary to carry out the program provided by Subchapter K, Chapter 17, of this code and rules:

(1) incorporating existing minimum state standards and rules for water supply and sewer services established by the commission; and

(2) requiring compliance with existing rules of any state agency relating to septic tanks and other waste disposal systems.

(b) In developing rules under this section, the board shall

examine other existing laws relating to counties and municipalities.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.289, eff. Sept. 1, 1995.

Sec. 16.343. MINIMUM STATE STANDARDS AND MODEL POLITICAL SUBDIVISION RULES. (a) The board shall, after consultation with the attorney general and the commission, prepare and adopt model rules to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions, including rules of any state agency relating to septic tanks and other waste disposal systems, are met.

(b) The model rules must:

(1) assure that adequate drinking water is available to the residential areas in accordance with Chapter 341, Health and Safety Code, and the Rules and Regulations for Public Water Systems and the Drinking Water Standards Governing Water Quality and Reporting Requirements for Public Water Supply Systems adopted by the commission and other law and rules applicable to drinking water; and

(2) provide criteria applicable to tracts that were divided into two or more parts to lay out a subdivision and were not platted or recorded before September 1, 2005.

(c) The model rules must:

(1) assure that adequate sewer facilities are available to the residential areas through either septic tanks or an organized sewage disposal system that is a publicly or privately owned system for the collection, treatment, and disposal of sewage operated in accordance with the terms and conditions of a valid waste discharge permit issued by the commission or private sewage facilities in accordance with Chapter 366, Health and Safety Code, and the Construction Standards for On-Site Sewerage Facilities adopted by the commission and other law and rules applicable to sewage facilities; and

(2) provide criteria applicable to tracts that were divided into two or more parts to lay out a subdivision and were not platted or recorded before September 1, 2005.

(d) The model rules must prohibit the establishment of residential developments with lots of five acres or less in the political subdivision without adequate water supply and sewer

services. Also, the model rules must prohibit more than one single-family, detached dwelling to be located on each lot.

(e) The model rules must provide criteria governing the distance that structures must be set back from roads or property lines to ensure proper operation of water supply and sewer services and to reduce the risk of fire hazards.

(f) The model rules may impose a platting or replatting requirement pursuant to Subsection (b)(2), (c)(2), or (d). Except as may be required by an agreement developed under Chapter 242, Local Government Code, a municipality that has adopted the model rules may impose the applicable platting requirements of Chapter 212, Local Government Code, and a county that has adopted the model rules may impose the applicable platting requirements of Chapter 232, Local Government Code, to real property that is required to be platted or replatted by the model rules under this section.

(g) Before an application for funds under Section 15.407 or Subchapter P, Chapter 15, or Subchapter K, Chapter 17, may be considered by the board, if the applicant is located:

(1) in a municipality, the municipality must adopt and enforce the model rules in accordance with this section;

(2) in the extraterritorial jurisdiction of a municipality, the applicant must demonstrate that the model rules have been adopted and are enforced in the extraterritorial jurisdiction by the municipality or the county; or

(3) outside the extraterritorial jurisdiction of a municipality, the county must adopt and enforce the model rules in accordance with this section.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(71), (78), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 422, Sec. 5, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 648, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.290, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 979, Sec. 15, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 404, Sec. 34, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1234, Sec. 27, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 15, eff. September

1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1364 (S.B. 1599), Sec. 5, eff. September 1, 2013.

Sec. 16.344. OVERSIGHT. (a) The board shall monitor the performance of a political subdivision that receives financial assistance under Subchapter K, Chapter 17, of this code to ensure that the project approved in the application and plans is constructed in the manner described in the application and plans and that the terms and conditions that govern the financial assistance are satisfied.

(b) A political subdivision that receives financial assistance shall submit to the board monthly or as often as otherwise required by board rules an account of expenditures for the project during the preceding month or other required period.

(c) A political subdivision that receives financial assistance shall furnish at the board's request additional information necessary for the board to monitor compliance with the approved application and plan for financial assistance and the terms and conditions of the financial assistance.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 6.01, eff. September 1, 2007.

Sec. 16.345. AUTHORITY TO PARTICIPATE IN PROGRAM. (a) A political subdivision may exercise any authority necessary to participate in a program under Section 15.407 of this code or Subchapter K, Chapter 17, of this code and carry out the terms and conditions under which the funds or the financial assistance is provided.

(b) In addition to any other authority to issue bonds or other obligations or incur any debt, an affected county or another political subdivision, other than a nonprofit water supply corporation, eligible for financial assistance under Subchapter K, Chapter 17, of this code may issue bonds payable from and secured by a pledge of the revenues derived or to be derived from the operation

of water supply or sewer service systems for the purpose of acquiring, constructing, improving, extending, or repairing water supply or sewer facilities. The bonds shall be issued in accordance with and an affected county or another political subdivision may exercise the powers granted by:

(1) Subchapter B, Chapter 1502, Government Code;

(2) Chapter 1201, Government Code;

(3) Chapter 1371, Government Code; and

(4) other laws of the state.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13. Amended by Acts 1999, 76th Leg., ch. 404, Sec. 35, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1064, Sec. 44, eff. Sept. 1, 1999.

Sec. 16.346. EXAMINATION OF ABILITY OF A DISTRICT TO PROVIDE SERVICES AND FINANCING. (a) In connection with an application under Subchapter K, Chapter 17, of this code, the board may consider and make any necessary investigations and inquiries as to the feasibility of creating a conservation and reclamation district under Article XVI, Section 59, of the Texas Constitution to provide, in lieu of financial assistance under the application, water supply and sewer services in the area covered by the application through issuance of district bonds to be sold on the regular bond market.

(b) In carrying out its authority under this section, the board may require the applicant to provide necessary information to assist the board in making a determination as to the feasibility of creating a district to provide the services and financing covered by the application.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13.

Sec. 16.347. REQUIREMENT OF IMPOSITION OF DISTRESSED AREAS WATER FINANCING FEE. (a) In this section:

(1) "Distressed areas water financing fee" means a fee imposed by a political subdivision on undeveloped property.

(2) "Undeveloped property" means a tract, lot, or reserve in an area in a political subdivision to be served by water supply or sewer services financed in whole or in part with financial assistance from the board under Subchapter K, Chapter 17, of this code for

which a plat has been filed under Subchapter A, Chapter 212, or Chapter 232, Local Government Code.

(b) The board may require, as a condition for granting an application for financial assistance under Subchapter K, Chapter 17, of this code to a political subdivision in which a plat is required to be filed under Subchapter A, Chapter 212, or Chapter 232, Local Government Code, that the applicant impose a distressed areas water financing fee on undeveloped property in the political subdivision if the board determines that imposition of the fee would:

(1) reduce the amount of any financial assistance that the board may provide to accomplish the purposes of the political subdivision under the application; or

(2) assist the political subdivision to more effectively retire any debt undertaken by the political subdivision in connection with financial assistance made available by the board to the political subdivision.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13.

Sec. 16.348. SETTING OF FEE BY POLITICAL SUBDIVISION; LIEN; DELINQUENT FEES. (a) Before a political subdivision may set the amount of or impose a fee under Section 16.347 of this code, the political subdivision shall hold a hearing on the matter.

(b) Notice of the hearing shall be published in a newspaper of general circulation in the political subdivision once a week for two consecutive weeks. The first publication must occur not later than the 30th day before the date of the hearing. The political subdivision shall send, not later than the 30th day before the date of the hearing, notice of the hearing by certified mail, return receipt requested, to each owner of undeveloped property in the political subdivision. The tax assessor and collector of the political subdivision shall certify to the political subdivision the names of the persons owning undeveloped land in the political subdivision as reflected by the most recent certified tax roll of the political subdivision. Notice of the hearing also must be provided by certified mail, return receipt requested, to each mortgagee of record that has submitted a written request to be informed of any hearings. To be effective, the written request must be received by the political subdivision not later than the 60th day before the date

of the hearing. The written request for notice must include the name and address of the mortgagee, the name of the property owner in the political subdivision, and a brief property description.

(c) The amount of a distressed areas water financing fee imposed by a political subdivision pursuant to this section must be reasonably related to that portion of the total amount required to be paid annually in repayment of financial assistance that can be attributed to undeveloped property in the area to be served by water supply and sewer services provided with that financial assistance.

(d) The distressed areas water financing fee or the lien securing the fee is not effective or enforceable until the governing body of the political subdivision has filed for recordation with the county clerk in each county in which any part of the political subdivision is located and the county clerk has recorded and indexed a duly affirmed and acknowledged notice of imposition of the distressed areas water financing fee containing the following information:

(1) the name of the political subdivision;

(2) the date of imposition by the political subdivision of the distressed areas water financing fee;

(3) the year or years to which the distressed areas water financing fee applies; and

(4) a complete and accurate legal description of the boundaries of the political subdivision.

(e) On January 1 of each year, a lien attaches to undeveloped property to secure payment of any fee imposed under this section and the interest, if any, on the fee. The lien shall be treated as if it were a tax lien and has the same priority as a lien for taxes of the political subdivision.

(f) If a distressed areas water financing fee imposed under Section 16.347 of this code is not paid in a timely manner, the political subdivision may file suit to foreclose the lien securing payment of the fee and interest. The political subdivision may recover, in addition to the fee and interest, reasonable costs, including attorney's fees, incurred by the political subdivision in enforcing the lien not to exceed 15 percent of the delinquent fee and interest. A suit authorized by this subsection must be filed not later than the fourth anniversary of the date the fee became due. A fee delinquent for more than four years and interest on the fee are considered paid unless a suit is filed before the expiration of the

four-year period.

(g) A person owning undeveloped property for which a distressed areas water financing fee is assessed under this section may not construct or add improvements to the property if the fee is delinquent.

(h) A political subdivision shall, on the written request of any person and within five days after the date of the request, issue a certificate stating the amount of any unpaid distressed areas water financing fees, including interest on the fees, that have been imposed or assessed against a tract of property located in the political subdivision. The political subdivision may charge a fee not to exceed $10 for each certificate. A certificate issued through fraud or collusion is void.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13.

Sec. 16.349. FEES. (a) A political subdivision that receives financial assistance may charge persons in an economically distressed area in which water supply and sewer services are furnished an amount for those services that is not less than the amount provided in the application for financial assistance.

(b) Except as provided by Subsection (c), the amount charged under Subsection (a) of this section may be equal to or less than the rates paid for water supply and sewer services by residents of the political subdivision.

(c) A political subdivision holding a certificate of convenience and necessity described by Section 13.242, that extends service to an economically distressed area outside the boundaries of the political subdivision, may not charge the residents of the area rates that exceed the lesser of:

(1) the cost of providing service to the area; or

(2) the rates charged other residents of the political subdivision plus 15 percent.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13. Amended by Acts 1995, 74th Leg., ch. 979, Sec. 16, eff. June 16, 1995.

Sec. 16.350. ELIGIBLE COUNTIES AND MUNICIPALITIES TO ADOPT RULES. (a) A county or municipality that applies for or receives

funds or financial assistance under Section 15.407 of this code or Subchapter K, Chapter 17, of this code must adopt and enforce the model rules developed under Section 16.343 of this code to be eligible to participate in this program. The county or municipality by order or ordinance shall adopt and enter the model rules in the minutes of a meeting of its governing body and shall publish notice of that action in a newspaper with general circulation in the county or municipality. A municipality is eligible to participate in this program only if the county in which the project is located adopts and enforces the model rules.

(b) Rules adopted by the commissioners court under this section must apply to all the unincorporated area of the county.

(c) A municipality may adopt rules relating to water supply and sewer services within its corporate boundaries and extraterritorial jurisdiction that are more strict than those prepared under Section 16.343 of this code.

(d) A county or municipality that receives funds or financial assistance under Section 15.407 of this code or Subchapter K, Chapter 17, of this code may grant an exemption for a subdivision from the requirements of the model rules only if the county or municipality supplies the subdivision with water supply and sewer services that meet the standards of the model rules.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13. Amended by Acts 1991, 72nd Leg., ch. 422, Sec. 6, eff. Sept. 1, 1991.

Sec. 16.351. CONTRACT PREFERENCE. A political subdivision that receives financial assistance under Subchapter K, Chapter 17, of this code shall give preference in the award of political subdivision contracts to acquire, construct, extend, or provide water supply and sewer services or facilities to a bidder that agrees to use labor from inside the political subdivision to the extent possible.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13.

Sec. 16.352. ENFORCEMENT OF RULES. A person who violates a rule adopted by a municipality or county under this subchapter or under Subchapter B or C, Chapter 232, Local Government Code, is liable to the municipality or county for a civil penalty of not less

than $500 and not more than $1,000 for each violation and for each day of a violation. The maximum civil penalty that may accrue each day is $5,000. The appropriate attorney representing the municipality or county may sue to collect the penalty. The recovered penalty shall be deposited in the general fund of the municipality or county.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 36, eff. Sept. 1, 1999.

Sec. 16.353. INJUNCTION. (a) In addition to any other remedy, the attorney general, the municipal attorney of the municipality in which a violation under Section 16.352 occurs, or the county or district attorney of the county in which a violation under Section 16.352 occurs may apply to a district court for, and the district court may grant, the state or the political subdivision an appropriate prohibitory or mandatory order, including a temporary restraining order or a temporary or permanent injunction, enjoining a violation of this subchapter, the rules described by Section 16.352, or Subchapter B or C, Chapter 232, Local Government Code.

(b) An injunction issued under this section may be issued without the requirement of a bond or other undertaking.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 36, eff. Sept. 1, 1999.

Sec. 16.3535. DAMAGES. In addition to any other remedy, the attorney general, the municipal attorney of the municipality in which a violation under Section 16.352 occurs, or the county or district attorney of the county in which a violation under Section 16.352 occurs may apply to a district court for, and the district court may grant, monetary damages to cover the cost of enforcing this subchapter, rules adopted under this subchapter, or Subchapter B or C, Chapter 232, Local Government Code.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 36, eff. Sept. 1, 1999.

Sec. 16.354. ATTORNEY GENERAL ENFORCEMENT. In addition to the ability of any political subdivision to enforce this subchapter, the attorney general may file suit to:

(1) enforce a rule adopted under Section 16.350;

(2) recover a civil penalty under Section 16.352;

(3) obtain injunctive relief under Section 16.353;

(4) recover damages under Section 16.3535;

(5) enforce a political subdivision's rules, recover any penalty, recover any damages, and obtain any injunctive relief; or

(6) recover attorney's fees, investigative costs, and court costs.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 36, eff. Sept. 1, 1999.

Sec. 16.3545. VENUE. A suit brought under this subchapter for injunctive relief or the recovery of a civil penalty or damages may be brought in a district court in:

(1) the county in which the defendant resides;

(2) the county in which the alleged violation or threat of violation occurs; or

(3) Travis County.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 36, eff. Sept. 1, 1999.

Sec. 16.355. AUTHORITY OVER FACILITIES. A political subdivision may construct, contract for construction, operate, or contract with any person for operation of any water supply or sewer services or facilities provided by the political subdivision with financial assistance obtained under Subchapter K, Chapter 17, of this code.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.13.

Sec. 16.356. USE OF REVENUE FROM OPERATION OF WATER SUPPLY OR SEWER SERVICE PROJECTS. (a) A political subdivision that receives financial assistance from the economically distressed areas program under Subchapter K, Chapter 17, may not use any revenue received from fees collected from a water supply or sewer service constructed in whole or in part from funds from the economically distressed areas program account for purposes other than utility purposes. The annual financial statement prepared by a municipality under Section 103.001, Local Government Code, must include a specific report on compliance

with this section.

(b) At the request of the board or on the attorney general's own initiative, the attorney general may file suit to enjoin an actual or threatened violation of this section.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 37, eff. Sept. 1, 1999.

SUBCHAPTER K. WATER CONSERVATION

Sec. 16.401. STATEWIDE WATER CONSERVATION PUBLIC AWARENESS PROGRAM. (a) The executive administrator shall develop and implement a statewide water conservation public awareness program to educate residents of this state about water conservation. The program shall take into account the differences in water conservation needs of various geographic regions of the state and shall be designed to complement and support existing local and regional water conservation programs.

(b) The executive administrator is required to develop and implement the program required by Subsection (a) in a state fiscal biennium only if the legislature appropriates sufficient money in that biennium specifically for that purpose.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 8, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.18, eff. September 1, 2007.

Sec. 16.402. WATER CONSERVATION PLAN REVIEW. (a) Each entity that is required to submit a water conservation plan to the commission under this code shall submit a copy of the plan to the executive administrator.

(b) Each entity that is required to submit a water conservation plan to the executive administrator, board, or commission under this code shall report annually to the executive administrator on the entity's progress in implementing the plan.

(c) The executive administrator shall review each water conservation plan and annual report to determine compliance with the minimum requirements established by Section 16.4021 and the submission deadlines developed under Subsection (e) of this section.

(d) The board may notify the commission if the board determines

that an entity has violated this section or a rule adopted under this section. Notwithstanding Section 7.051(b), a violation of this section or of a rule adopted under this section is enforceable in the manner provided by Chapter 7 for a violation of a provision of this code within the commission's jurisdiction or of a rule adopted by the commission under a provision of this code within the commission's jurisdiction.

(e) The board and commission jointly shall adopt rules:

(1) identifying the minimum requirements and submission deadlines for the annual reports required by Subsection (b);

(2) requiring the methodology and guidance for calculating water use and conservation developed under Section 16.403 to be used in the reports required by Subsection (b); and

(3) providing for the enforcement of this section and rules adopted under this section.

(f) At a minimum, rules adopted under Subsection (e)(2) must require an entity to report the most detailed level of municipal water use data currently available to the entity. The board and commission may not adopt a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 8, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.18, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 10, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 9, eff. September 1, 2019.

Sec. 16.4021. WATER CONSERVATION PLAN REQUIREMENTS. (a) In this section, "water conservation plan" means a plan that describes a program of water conservation for the more efficient use of water.

(b) This section applies to an application for financial assistance under:

(1) Subchapters C, D, E, G, H, J, O, Q, and R, Chapter 15;

(2) Subchapters E and F of this chapter; and

(3) Subchapters D, F, I, K, and L, Chapter 17.

(c) Except as provided by Subsection (d), an applicant must submit with the application a description of the applicant's proposed or adopted water conservation plan. The water conservation plan:

(1) must:

(A) incorporate the practices, techniques, and technology described by Section 15.001(9)(B);

(B) meet reasonably anticipated local needs and conditions, as determined by the board; and

(C) include specific, quantified five-year and 10-year targets for water savings, including goals for water loss programs and municipal use measured in gallons per capita per day; and

(2) may include:

(A) restrictions on discretionary water uses, including lawn watering;

(B) plumbing code standards for water conservation in new building construction;

(C) retrofit programs to improve water-use efficiency in existing buildings;

(D) educational programs;

(E) universal metering;

(F) conservation-oriented water rate structures;

(G) drought contingency plans; and

(H) distribution system leak detection and repair.

(d) An applicant is not required to submit a water conservation plan under this section if:

(1) an emergency exists as determined by the board;

(2) the amount of financial assistance under consideration is not greater than $500,000;

(3) the applicant demonstrates and the board finds that the implementation of a water conservation plan is not reasonably necessary for conservation; or

(4) the financial assistance is to fund a project that consists of construction outside this state.

(e) The board may not provide financial assistance to an applicant to which this section applies unless the applicant demonstrates that it has adopted and implemented a water conservation plan that meets the requirements for a water conservation plan under Subsection (c).

(f) The board shall establish an educational and technical

assistance program to assist political subdivisions in developing comprehensive water conservation plans.

(g) If the applicant will use the project to furnish water or services to another entity that will furnish the water or services to the ultimate consumer, the requirement for an applicant to demonstrate adoption and implementation of a water conservation plan can be met through contractual agreements between the applicant and the other entity providing for the adoption and implementation of a water conservation plan by the other entity.

(h) Rules adopted under this section must state the criteria for preparation, review, and enforcement of an applicant's water conservation plan.

Added by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 10, eff. September 1, 2019.

Sec. 16.403. WATER USE REPORTING. (a) The board and the commission, in consultation with the Water Conservation Advisory Council, shall develop a uniform, consistent methodology and guidance for calculating water use and conservation to be used by a municipality or water utility in developing water conservation plans and preparing reports required under this code. At a minimum, the methodology and guidance must include:

(1) a method of calculating total water use by a municipality or water utility, including water billed and nonrevenue water used, and a method of calculating water use for each sector of water users served by a municipality or water utility;

(2) a method of calculating total water use by a municipality or water utility in gallons per capita per day;

(3) a method of classifying water users within sectors;

(4) a method of calculating water use in the residential sector that includes both single-family and multifamily residences, in gallons per capita per day;

(5) a method of calculating water use in the industrial, agricultural, commercial, and institutional sectors that is not dependent on a municipality's population or the number of customers served by a water utility; and

(6) guidelines on the use of service populations by a municipality or water utility in developing a per-capita-based method

of calculation, including guidance on the use of permanent and temporary populations in making calculations.

(b) The board or the commission, as appropriate, shall use the methodology and guidance developed under Subsection (a) in evaluating a water conservation plan, program of water conservation, survey, or other report relating to water conservation submitted to the board or the commission under:

(1) Section 11.1271;

(2) Section 13.146;

(3) Section 16.012(m);

(4) Section 16.402; or

(5) Section 16.4021.

(c) The board, in consultation with the commission and the Water Conservation Advisory Council, shall develop a data collection and reporting program for municipalities and water utilities with more than 3,300 connections.

(d) Not later than January 1 of each odd-numbered year, the board shall submit to the legislature a report that includes the most recent data relating to:

(1) statewide water usage in the residential, industrial, agricultural, commercial, and institutional sectors; and

(2) the data collection and reporting program developed under Subsection (c).

(e) Data included in a water conservation plan or report required under this code and submitted to the board or commission must be interpreted in the context of variations in local water use. The data may not be the only factor considered by the commission in determining the highest practicable level of water conservation and efficiency achievable in the jurisdiction of a municipality or water utility for purposes of Section 11.085(l).

Added by Acts 2011, 82nd Leg., R.S., Ch. 595 (S.B. 181), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 11, eff. September 1, 2019.

Text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 595 (S.B. 181), Sec. 2

For text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 11, see other Sec. 16.404.

Sec. 16.404. RULES AND STANDARDS. The commission and the board, as appropriate, shall adopt rules and standards as necessary to implement this subchapter. At a minimum, the rules adopted under this subchapter must require an entity to report the most detailed level of water use data currently available to the entity. The commission may not adopt a rule that requires an entity to report water use data that is more detailed than the entity's billing system is capable of producing. The rules may require that billing systems purchased after September 1, 2011, be capable of reporting detailed water use data described in this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 595 (S.B. 181), Sec. 2, eff. June 17, 2011.

Text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 11

For text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 595 (S.B. 181), Sec. 2, see other Sec. 16.404.

Sec. 16.404. RULES AND STANDARDS. The commission and the board, as appropriate, shall adopt rules and standards as necessary to implement this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 11, eff. September 1, 2011.

SUBCHAPTER L. FLOOD PROJECT FUNDING

Sec. 16.451. DEFINITIONS. In this subchapter:

(1) "Advisory committee" means the Texas Infrastructure Resiliency Fund Advisory Committee.

(2) "Eligible political subdivision" means a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a municipality, or a county.

(3) "Flood project" means a drainage, flood mitigation, or flood control project, including:

(A) planning and design activities;

(B) work to obtain regulatory approval to provide

structural and nonstructural flood mitigation and drainage;

(C) construction of structural flood mitigation and drainage infrastructure;

(D) nonstructural or natural flood control strategies; and

(E) a federally authorized project to deepen a ship channel affected by a flooding event.

(4) "Resiliency fund" means the Texas infrastructure resiliency fund.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 3.01, eff. June 13, 2019.

Sec. 16.452. TEXAS INFRASTRUCTURE RESILIENCY FUND. (a) The Texas infrastructure resiliency fund is a special fund in the state treasury outside the general revenue fund.

(b) The resiliency fund shall be administered by the board in accordance with this subchapter.

(c) The board may invest, reinvest, and direct the investment of any available money in the resiliency fund as provided by law for the investment of public funds.

(d) Investment earnings, interest earned on amounts credited to the resiliency fund, and interest earned on loans made from the fund shall be deposited to the credit of the fund.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 3.01, eff. June 13, 2019.

Sec. 16.453. FLOODPLAIN MANAGEMENT ACCOUNT. (a) The floodplain management account is an account of the resiliency fund.

(b) The account consists of:

(1) money deposited to the credit of the account under Section 251.004, Insurance Code;

(2) money directly appropriated to the board; and

(3) money from gifts or grants from the United States government, local or regional governments, private sources, or other sources.

(c) The board may use the account to provide financing for activities related to:

(1) the collection and analysis of flood-related information;

(2) flood planning, protection, mitigation, or adaptation;

(3) the provision of flood-related information to the public through educational or outreach programs; or

(4) evaluating the response to and mitigation of flood incidents affecting residential property, including multifamily units, located in floodplains.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 3.01, eff. June 13, 2019.

For expiration of this section, see Subsection (j)

Sec. 16.454. HURRICANE HARVEY ACCOUNT. (a) The Hurricane Harvey account is an account in the resiliency fund.

(b) The board may use the account only to provide moneys to the Texas Division of Emergency Management for the division to provide financing for projects related to Hurricane Harvey. Financing under this section includes making a:

(1) grant to an eligible political subdivision to provide nonfederal matching funds to enable the subdivision to participate in a federal program for the participation in or development of:

(A) a hazard mitigation project, under guidelines issued by the Federal Emergency Management Agency or the Texas Division of Emergency Management or the successor in function to those entities;

(B) a public assistance project, under guidelines issued by the Federal Emergency Management Agency or the Texas Division of Emergency Management or the successor in function to those entities; or

(C) assistance under guidelines issued by the Natural Resources Conservation Service, the United States Economic Development Administration, or the United States Department of Housing and Urban Development, or the successor in function to those entities; and

(2) loan to an eligible political subdivision at or below market interest rates for the political subdivision's planning or design costs, permitting costs, construction costs, or other costs associated with state or federal regulatory activities with respect

to a flood project.

(c) A grant or loan awarded under this section may not provide more than 75 percent of the portion of the cost of the project that is paid with money other than money from a federal program.

(d) In collaboration with the Texas Division of Emergency Management, the board shall establish a point system for prioritizing flood projects other than public assistance grants for which money from the Hurricane Harvey account is sought. The system must include a standard for the board to apply in determining whether a flood project qualifies for funding at the time the application for funding is filed with the board.

(e) The Texas Division of Emergency Management shall give the highest consideration in awarding points to a flood project that will have a substantial effect, including a flood project that:

(1) is recommended or approved by the director of the Texas Division of Emergency Management or the successor in function to that entity; and

(2) meets an emergency need in a county where the governor has declared a state of disaster.

(f) After review and recommendation by the executive administrator and with input from the director of the Texas Division of Emergency Management or the successor in function to that entity, the Texas Division of Emergency Management may approve an application for financial assistance under this section only if the Texas Division of Emergency Management finds that:

(1) the application and assistance applied for meet the requirements of this subchapter and Texas Division of Emergency Management rules;

(2) the application demonstrates a sufficient level of cooperation among applicable political subdivisions and includes all of the political subdivisions substantially affected by the flood project; and

(3) the taxes or other revenue, or both the taxes and other revenue, pledged by the applicant, if applicable, will be sufficient to meet all the obligations assumed by the applicant.

(g) Principal and interest payments on loans made under Subsection (b)(2) may be deferred for not more than 10 years or until construction of the flood project is completed, whichever is the shorter period.

(h) Money from the account may be awarded to several eligible

political subdivisions for a single flood project.

(i) An eligible political subdivision that receives a grant for a flood project also may receive a loan from the account.

(j) This section expires September 1, 2031. The remaining balance of the account on that date is transferred to the flood plan implementation account.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 3.01, eff. June 13, 2019.

Text of section effective on adoption by the Texas Water Development Board of an initial state flood plan in accordance with legislation of the 86th Legislature, Regular Session, 2019, that requires the creation of a state flood plan.

Sec. 16.4545. FLOOD PLAN IMPLEMENTATION ACCOUNT. (a) The flood plan implementation account is an account in the resiliency fund.

(b) The board may use the account only to provide financing for projects included in the state flood plan.

(c) Money from the account may be awarded to several eligible political subdivisions for a single flood project.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 3.06.

Sec. 16.455. FEDERAL MATCHING ACCOUNT. (a) The federal matching account is an account in the resiliency fund.

(b) The board may use the account only to meet matching requirements for projects funded partially by federal money, including projects funded by the United States Army Corps of Engineers.

(c) The board may use the account to make a loan to an eligible political subdivision below market interest rates and under flexible repayment terms, including a line of credit or loan obligation with early prepayment terms, to provide financing for the local share of a federally authorized ship channel improvement project.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 3.01, eff. June 13, 2019.

Sec. 16.456. TEXAS INFRASTRUCTURE RESILIENCY FUND ADVISORY COMMITTEE. (a) The Texas Infrastructure Resiliency Fund Advisory Committee is composed of the seven members that serve on the State Water Implementation Fund for Texas Advisory Committee described by Section 15.438, with the co-presiding officers of that committee serving as presiding officers of the advisory committee. The director of the Texas Division of Emergency Management or the successor in function to that entity serves as a nonvoting member of the advisory committee, as an additional duty of the director's office.

(b) The advisory committee may hold public hearings, formal meetings, or work sessions. Either co-presiding officer of the advisory committee may call a public hearing, formal meeting, or work session of the advisory committee at any time. The advisory committee may not take formal action at a public hearing, formal meeting, or work session unless a quorum of the committee is present.

(c) Except as otherwise provided by this subsection, a member of the advisory committee is not entitled to receive compensation for service on the committee or reimbursement for expenses incurred in the performance of official duties as a member of the committee. Service on the advisory committee by a member of the senate or house of representatives is considered legislative service for which the member is entitled to reimbursement and other benefits in the same manner and to the same extent as for other legislative service.

(d) The advisory committee may submit comments and recommendations to the board regarding the use of money in the resiliency fund and for use by the board in adopting rules.

(e) The advisory committee shall review the overall operation, function, and structure of the resiliency fund at least semiannually and may provide comments and recommendations to the board on any matter.

(f) The advisory committee may adopt rules, procedures, and policies as needed to administer this section and implement its responsibilities.

(g) The advisory committee shall make recommendations to the board regarding information on the resiliency fund to be posted on the board's Internet website.

(h) The advisory committee may evaluate and may provide comments or recommendations on the feasibility of the state owning, constructing, operating, and maintaining flood projects, including

reservoirs and coastal barriers.

(i) The board shall provide an annual report to the advisory committee on:

(1) the board's compliance with statewide annual goals relating to historically underutilized businesses; and

(2) the participation level of historically underutilized businesses in flood projects that receive money from the resiliency fund.

(j) If the aggregate level of participation by historically underutilized businesses in flood projects that receive money from the resiliency fund does not meet statewide annual goals adopted under Chapter 2161, Government Code, the advisory committee shall make recommendations to the board to improve the participation level.

(k) The board shall supply staff support to the advisory committee.

(l) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 3.01, eff. June 13, 2019.

Sec. 16.457. REPORT REQUIRED. (a) In this section, "state agency" means:

(1) a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute; and

(2) a general academic teaching institution as defined by Section 61.003, Education Code.

(b) A state agency that uses or disburses federal money for flood research, planning, or mitigation projects shall submit a report to the board on a quarterly basis.

(c) The report must include the following information about federal money used or disbursed for flood research, planning, or mitigation projects:

(1) the original total of federal money received;

(2) the amount of the federal money spent or disbursed to date; and

(3) the eligibility requirements for receiving the federal money.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 3.01, eff. June 13, 2019.

Sec. 16.458. APPLICABLE LAW. Subchapter E, Chapter 17, applies to financial assistance made available from the resiliency fund, except that the board may execute contracts as necessary to evidence grant agreements.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 3.01, eff. June 13, 2019.

Sec. 16.459. TRANSPARENCY REQUIREMENTS. The board shall post the following information on the board's Internet website regarding the use of the resiliency fund and regularly update the information posted:

(1) the progress made in developing flood projects statewide;

(2) a description of each flood project that receives money from the resiliency fund, including:

(A) the expected date of completion of the flood project;

(B) the current status of the flood project;

(C) the proposed benefit of the flood project;

(D) the initial total cost estimate of the flood project and variances to the initial cost estimate exceeding five percent;

(E) a listing of the eligible political subdivisions receiving money from the resiliency fund;

(F) a listing of each political subdivision served by each flood project;

(G) an estimate of matching funds that will be available for the flood project resulting from the use of the resiliency fund; and

(H) the status of repayment of each loan provided in connection with a flood project, including an assessment of the risk of default based on a standard risk rating system;

(3) a description of the point system for prioritizing flood projects and the number of points awarded by the board for each

flood project;

(4) any nonconfidential information submitted to the board as part of an application for funding under this subchapter that is approved by the board;

(5) the administrative and operating expenses incurred by the board in administering the resiliency fund; and

(6) any other information required by board rule.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 3.01, eff. June 13, 2019.

Sec. 16.460. RULES. The board shall adopt rules necessary to carry out this subchapter, including rules:

(1) that establish procedures for an application for and for the award of financial assistance;

(2) that establish the prioritization system for flood projects that receive money from the resiliency fund;

(3) for the repayment of a loan from the resiliency fund; and

(4) for the administration of the resiliency fund.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 3.01, eff. June 13, 2019.

CHAPTER 17. PUBLIC FUNDING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 17.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(4) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(5) "Development fund manager" means the development fund manager of the Texas Water Development Board.

(6) "Political subdivision" means a state agency, a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or

Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party and any nonprofit water supply corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).

(7) "Water supply project" means:

(A) any engineering undertaking or work to conserve and develop water resources of the state, including the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, brush control, precipitation enhancement, desalinization, and other water storage and conservation projects, which may include flood storage, including underground storage projects, filtration and water treatment plants, including any system necessary to transport water from storage to points of distribution or from storage to filtration and treatment plants, including facilities for transporting water therefrom to wholesale purchasers or to retail purchasers as authorized by Section 17.072(c) of this code, by the acquisition, by purchase of rights in water, by the drilling of wells, or for any one or more of these purposes or methods;

(B) any engineering undertaking or work outside the state to provide for the maintenance and enhancement of the quality of water by eliminating saline inflow through well pumping and deep well injection of brine if such undertaking or work results in water being available for use in or for the benefit of Texas;

(C) any undertaking or work by Texas political subdivisions to conserve, convey, or develop water resources in areas outside Texas if such undertaking or work results in water being available for use in or for the benefit of Texas; or

(D) a channel storage reservoir located on an international boundary between Texas and Mexico that develops the water resources of Texas and the research, planning, and actions necessary to obtain regulatory authority at the local, state, and federal level.

(8) "Construction" means any one or more of the following:

(A) preliminary planning to determine the feasibility of a water supply project, treatment works, or flood control measures;

(B) engineering, architectural, legal, title, fiscal,

or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions;

(C) the expense of any condemnation or other legal proceeding;

(D) erecting, building, acquiring, altering, remodeling, improving, or extending a water supply project, treatment works, or flood control measures; or

(E) the inspection or supervision of any of the items listed in this subdivision.

(9) "Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement this chapter or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including:

(A) intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances;

(B) extensions, improvements, remodeling, additions, and alterations of items listed in Paragraph (A) of this subdivision;

(C) elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities;

(D) any works, including sites for works and acquisition of the land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from treatment;

(E) any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste; or

(F) facilities to provide for the collection, control, and disposal of waste heat.

(10) "Water quality enhancement" means the construction of treatment works by political subdivisions with loans provided by water quality enhancement funds.

(11) "Water quality enhancement funds" means the proceeds from the sale of Texas Water Development Bonds issued under the authority of Article III, Section 49-d-1, of the Texas Constitution, and proceeds from the sale of bonds dedicated to water quality enhancement purposes under Article III, Sections 49-d-2, 49-d-6, and 49-d-7, of the Texas Constitution.

(12) "Flood control funds" means the proceeds from the sale

of Texas Water Development Bonds issued under the authority of Article III, Sections 49-d-2, 49-d-6, and 49-d-7, of the Texas Constitution and reserved for flood control purposes.

(13) "Floodplain management plan" means a comprehensive plan for flood control within a watershed, based on analysis of alternative nonstructural and structural means of reducing flood hazards, including assessments of costs, benefits, and environmental effects and may include preliminary design of structural flood control projects.

(14) "Nonstructural flood control" includes measures such as:

(A) acquisition of floodplain land for use as public open space;

(B) acquisition and removal of buildings located in a floodplain; or

(C) relocation of residents of buildings removed from a floodplain.

(15) "Structural flood control" includes measures such as construction of storm water retention basins, enlargement of stream channels, beach nourishment, and modification or reconstruction of bridges.

(16) "Floodplain" means land subject to inundation by the 100-year-frequency flood.

(17) "Financial assistance" means any loan of funds from the water supply account, the water quality enhancement account, or the flood control account to a political subdivision for construction of a water supply project, including projects referenced in the state water plan, treatment works, or flood control measures through the purchase of bonds or other obligations of the political subdivision, and any loan of funds the source of which is the proceeds from water financial assistance bonds.

(18) "Bonds" means Texas Water Development Bonds authorized by the Texas Constitution.

(19) "Waste" has the same meaning as provided in Section 26.001 of this code.

(20) "Water development bonds" means the Texas Water Development Bonds authorized by Article III, Sections 49-c and 49-d, of the Texas Constitution and bonds dedicated to use for the purposes of those sections and for flood control purposes under Article III, Sections 49-d-2, 49-d-6, and 49-d-7, of the Texas Constitution.

(21) "Water quality enhancement bonds" means the Texas Water Development Bonds authorized by Article III, Section 49-d-1, of the Texas Constitution and bonds dedicated to use for the purposes of that section by Article III, Sections 49-d-2, 49-d-6, and 49-d-7, of the Texas Constitution.

(22) "Lending rate" means the rate of interest established by the board as the lending rate.

(23) "Conservation" means:

(A) the development of water resources; and

(B) those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(24) "Regional facility" means a water supply, wastewater collection and treatment, flood control, or other system which incorporates multiple service areas or drainage areas into an areawide service facility thereby reducing the number of required facilities, or any system which serves an area that is other than a single county, city, special district, or other political subdivision of the state the specified size of which is determined by:

(A) population;

(B) number of governmental entities served;

(C) service capacity; or

(D) any combination of the factors listed in Paragraphs (A) through (C) of this subdivision.

Regional wastewater treatment facilities may also include those identified in the approved state water quality management plan and the annual updates to that plan.

(25) "Water financial assistance bonds" means the Texas Water Development Bonds authorized to be issued by Section 49-d-8, Article III, Texas Constitution, and dedicated to use for the purposes described in that section.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 7, Sec. 1, 3(2), (3), eff. March 24, 1987; Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(57) eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 66, Sec. 2; Acts 1989, 71st Leg., ch. 1062, Sec. 2; Acts 1991, 72nd Leg., ch. 295, Sec. 42, eff. June 7, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec.

1.065, eff. Aug. 12, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 5.04, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1010, Sec. 5.05.

Sec. 17.002. OPEN MEETINGS AND OPEN RECORDS LAWS. Nonprofit water supply corporations which receive any assistance under this chapter are subject to Chapter 551, Government Code, and to Chapter 552, Government Code.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.20. Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(78), (90), eff. Sept. 1, 1995.

Sec. 17.003. BOND REVIEW. (a) Bonds may not be issued under this chapter after January 1, 1988, and proceeds of bonds issued after January 1, 1988, may not be used to finance a project unless the issuance or project, as applicable, has been reviewed and approved by the bond review board.

(b) A member of the bond review board may not be held liable for damages resulting from the performance of the members' functions under this chapter.

(c) Water financial assistance bonds that have been authorized but have not been issued are not considered to be state debt payable from the general revenue fund for purposes of Section 49-j, Article III, Texas Constitution, until the legislature makes an appropriation from the general revenue fund to the board to pay the debt service on the bonds.

(d) In requesting approval for the issuance of bonds under this chapter, the executive administrator shall certify to the bond review board whether the bonds are reasonably expected to be paid from:

(1) the general revenues of the state; or

(2) revenue sources other than the general revenues of the state.

(e) The bond review board shall verify whether debt service on bonds to be issued by the board under this chapter is state debt payable from the general revenues of the state, in accordance with the findings made by the board in the resolution authorizing the issuance of the bonds and the certification provided by the executive administrator under Subsection (d).

(f) Bonds issued under this chapter that are designed to be paid from the general revenues of the state shall cease to be considered bonds payable from those revenues if:

(1) the bonds are backed by insurance or another form of guarantee that ensures payment from a source other than the general revenues of the state; or

(2) the board demonstrates to the satisfaction of the bond review board that the bonds no longer require payment from the general revenues of the state and the bond review board so certifies to the Legislative Budget Board.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 66, Sec. 7.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 983 (H.B. 1732), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 12, eff. September 1, 2011.

SUBCHAPTER B. WATER DEVELOPMENT BONDS

Sec. 17.011. ISSUANCE OF WATER DEVELOPMENT BONDS. (a) The board, by resolution, from time to time may provide for the issuance of negotiable bonds in an aggregate amount not to exceed $400 million pursuant to Article III, Section 49-c and Section 49-d, of the Texas Constitution, and the issuance of additional negotiable bonds in an aggregate amount not to exceed $200 million pursuant to Article III, Section 49-d-1, of the Texas Constitution, not to exceed $980 million pursuant to Article III, Section 49-d-2, of the Texas Constitution, not to exceed $400 million pursuant to Article III, Section 49-d-6, of the Texas Constitution, and not to exceed $500 million pursuant to Article III, Section 49-d-7, of the Texas Constitution.

(b) The board, by resolution, from time to time may provide for the issuance of negotiable bonds in an aggregate amount of not to exceed the total principal amount the board has obligated the Texas Water Development Fund for the acquisition of storage facilities by the execution of a contract with the United States or any of its agencies under Article III, Section 49-d, of the Texas Constitution, and to the extent the bond proceeds are utilized to reduce the board's obligation under a contract with the United States or any of its agencies under Article III, Section 49-d, of the Texas

Constitution, the bonds may not be considered in determining the aggregate amount of bonds issued under Article III, Sections 49-c, 49-d, 49-d-2, 49-d-6, and 49-d-7, of the Texas Constitution, in addition to the contract with the United States or any of its agencies.

(c) Notwithstanding any other provision of this section, the board by resolution may issue water financial assistance bonds for any one or more of the purposes described in Section 49-d-8, Article III, Texas Constitution, in an aggregate principal amount not to exceed the amount of bonds authorized by Section 49-d-8, Article III, Texas Constitution, in accordance with the provisions of Subchapter L.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 133, Sec. 2.07; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 66, Sec. 3; Acts 1989, 71st Leg., ch. 1062, Sec. 3; Acts 1997, 75th Leg., ch. 1010, Sec. 5.06, eff. Sept. 1, 1997.

Sec. 17.0111. DEDICATION OF CERTAIN BONDS. No more than $250 million in principal amount of bonds authorized by Article III, Section 49-d-7, of the Texas Constitution, and issued under either that section or Article III, Section 49-d-8, of the Texas Constitution, may be dedicated to the purposes provided by Subchapter K .

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.14. Amended by Acts 1991, 72nd Leg., ch. 297, Sec. 1; Acts 1997, 75th Leg., ch. 1010, Sec. 5.07, eff. Sept. 1, 1997.

Sec. 17.0112. AUTHORIZATION OF CERTAIN BONDS FOR FINANCIAL ASSISTANCE. (a) The board may issue not more than $25 million in bonds dedicated under Section 17.0111 of this code and may issue not more than $50 million in bonds authorized under Article III, Texas Constitution, during a fiscal year to provide financial assistance for water supply and sewer services as provided under Subchapter K of this chapter.

(b) On request of the board, the bond review board by

resolution may waive during any state fiscal year the limits provided by Subsection (a) and authorize the board to issue an additional amount of bonds if the bond review board finds that the amount of bonds authorized for that state fiscal year has been exhausted or there is not a sufficient amount of bonds to meet needs of the program during the state fiscal year and that the public health and safety require immediate authorization of additional bonds. Before the bond review board adopts such a resolution, it shall give notice and hold a hearing to determine whether the limits should be waived and the authorization given.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.14. Amended by Acts 1993, 73rd Leg., ch. 844, Sec. 4, eff. Aug. 30, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 4, eff. September 1, 2005.

Sec. 17.012. DESCRIPTION OF BONDS. The bonds shall be on a parity and shall be called Texas Water Development Bonds. The board may issue them in one or several installments and shall date the bonds of each issue.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.013. SALE PRICE OF BONDS. The board may sell an installment or series of bonds at prices determined by the board.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.014. INTEREST ON BONDS. (a) The bonds of each issue shall bear interest payable annually or semiannually at the option of the board.

(b) The board may authorize bonds or notes to bear interest at a rate or rates not to exceed the maximum net effective interest rate allowed by law.

(c) The interest rates under Subsection (b) of this section may

be fixed, variable, floating, adjustable, or otherwise, as determined in accordance with the resolution authorizing the issuance of the bonds or notes. The resolution may provide a formula, index, or contractual arrangement for the periodic determination of interest rates without the requirement of specific approval of each determination by the board.

(d) The resolution under which the bonds or notes are issued may delegate to one or more designated officers, employees, or agents of the board the authority to act on behalf of the board, while the bonds or notes remain outstanding, in fixing dates, prices, interest rates, interest payment periods, and other procedures specified in the resolution, so that, among other things, the interest on the bonds or notes may be adjusted by the officer, employee, or agent to permit the bonds or notes to be sold or resold in conjunction with secondary market transactions.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.015. FORM, DENOMINATION, PLACE OF PAYMENT. The board shall:

(1) determine the form of the bonds, including the form of any interest coupons to be attached;

(2) fix the denomination of the bonds; and

(3) fix the places of payment of the principal and interest.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.016. MATURITY OF BONDS. The bonds of each issue shall mature, serially or otherwise, not more than 50 years from their date of issuance.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.017. REDEMPTION BEFORE MATURITY. In the resolution

providing for the issuance of bonds, the board may fix the price, terms, and conditions for redemption of bonds before maturity.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.018. REGISTERED AND BEARER BONDS. The resolution may provide for registration of the bonds as to ownership, successive conversion and reconversion from registered to bearer bonds, and successive conversion and reconversion from bearer to registered bonds.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.019. NOTICE OF BOND SALE. After the board decides to call for bids for the sale of bonds, the board shall publish an appropriate notice of the sale at least one time in one or more recognized financial publications of general circulation published within the state and one or more recognized financial publications published outside the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.020. COMPETITIVE BIDS. The board shall sell the bonds only after competitive bidding to the highest and best bidder. The board may reject any or all bids.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.021. SECURITY FOR BIDS. The board shall require every bidder, except administrators of state funds, to include with the bid an exchange or cashier's check for a sum the board considers adequate as a forfeit guaranteeing acceptance of and payment for all bonds covered by the bids and accepted by the board.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.022. APPROVAL OF BONDS; REGISTRATION. Before bonds are delivered to the purchasers, the bonds and the record pertaining to their issuance shall be submitted to the attorney general for his approval. When the attorney general's approval is obtained, the bonds shall be registered in the office of the state comptroller.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.023. EXECUTION OF BONDS. The bonds shall be executed on behalf of the board as general obligations of the state in the following manner: the chairman of the board and the development fund manager shall sign the bonds; the board shall impress its seal on the bonds; the governor shall sign the bonds; and the Secretary of State shall attest the bonds and impress on them the state seal.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.024. FACSIMILE SIGNATURES AND SEALS. The resolution authorizing the issuance of an installment or series of bonds may prescribe the extent to which the board in executing the bonds and appurtenant coupons may use facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals. Interest coupons may be signed by the facsimile signatures of the chairman of the board and the development fund manager.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.025. SIGNATURE OF FORMER OFFICER. If an officer whose manual or facsimile signature appears on a bond or whose facsimile signature appears on any coupon ceases to be an officer before the bond is delivered, the signature is valid and sufficient for all

purposes as if he had remained in office until the delivery had been made.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.026. BONDS INCONTESTABLE. After approval by the attorney general, registration by the comptroller, and delivery to the purchasers, the bonds are incontestable and constitute general obligations of the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.027. PAYMENT BY COMPTROLLER. The comptroller shall pay the principal of the bonds as they mature and the interest as it becomes payable.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1423, Sec. 20.05, eff. Sept. 1, 1997.

Sec. 17.028. PAYMENT ENFORCEABLE BY MANDAMUS. Payment of the bonds and performance of official duties prescribed by Article III, Sections 49-c, 49-d, 49-d-1, 49-d-2, 49-d-6, and 49-d-7, of the Texas Constitution and by this subchapter may be enforced in any court of competent jurisdiction by mandamus or other appropriate proceeding.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 2.07; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 66, Sec. 4; Acts 1989, 71st Leg., ch. 1062, Sec. 3.

Sec. 17.029. REFUNDING BONDS. The board may provide by resolution for the issuance of refunding bonds to refund outstanding bonds issued under this chapter and their accrued interest. The board may sell the refunding bonds and use the proceeds to retire the

outstanding bonds issued under this chapter, exchange the refunding bonds for the outstanding bonds, or refund the bonds in the manner provided by any other applicable statute, including Chapter 1207, Government Code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 1420, Sec. 8.406, eff. Sept. 1, 2001.

Sec. 17.030. BONDS NEGOTIABLE INSTRUMENTS. The bonds issued under the provisions of this chapter are negotiable instruments under the laws of this state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.031. BONDS NOT TAXABLE. Bonds issued under this chapter, the income from the bonds, and the profit made on their sale are free from taxation within the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.032. AUTHORIZED INVESTMENTS. Bonds issued under this chapter are legal and authorized investments for:

(1) banks;

(2) savings banks;

(3) trust companies;

(4) building and loan associations;

(5) insurance companies;

(6) fiduciaries;

(7) trustees;

(8) guardians; and

(9) sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept.

1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.033. SECURITY FOR DEPOSIT OF FUNDS. Bonds issued under this chapter when accompanied by all appurtenant unmatured coupons are lawful and sufficient security for all deposits of funds of the state or of a city, town, village, county, school district, or any other agency or political subdivision of the state at the par value of the bonds.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.034. MUTILATED, LOST, DESTROYED BONDS. The board may provide for the replacement of any mutilated, lost, or destroyed bond.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.035. SUBCHAPTER CUMULATIVE OF OTHER LAWS. (a) This subchapter is cumulative of other laws on the subject, and the board may use provisions of other applicable laws in the issuance of its bonds and other obligations, but this subchapter is wholly sufficient authority for the issuance of bonds and the performance of all other acts and procedures authorized by this subchapter.

(b) In addition to other authority granted by this subchapter, 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.

Added by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.407, eff. Sept. 1, 2001.

SUBCHAPTER C. FUNDING PROVISIONS

Sec. 17.071. DISPOSITION OF MONEY RECEIVED. All money received by the board shall be deposited in the State Treasury and credited to

the proper special fund as provided in this subchapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.072. DEVELOPMENT FUND. (a) The Texas Water Development Fund, referred to as the "development fund," is a special revolving fund in the State Treasury.

(b) Except as provided by Subsections (f), (h), (j), and (k) of this section, proceeds from the sale of water development bonds, together with all proceeds (excluding accrued interest which shall be deposited into the interest and sinking fund) from the sale, refunding, or prepayment of political subdivision bonds acquired in carrying out the purposes set out in Article III, Sections 49-c, 49-d, 49-d-2, 49-d-6, and 49-d-7, of the Texas Constitution, shall be deposited in a special account in the development fund designated "water supply account," and other money for deposit therein as provided in this chapter shall be credited to the water supply account.

(c) The water supply account may be used for any water supply project and in any manner consistent with the provisions of the constitution, including retail distribution.

(d) Except as provided by Subsections (j) and (k) of this section, proceeds from the sale of water quality enhancement bonds, together with all proceeds (excluding accrued interest which shall be deposited into the interest and sinking fund) from the sale, refunding, or prepayment of political subdivision bonds acquired in carrying out the purposes in Article III, Section 49-d-1, of the Texas Constitution, shall be deposited in a special account in the development fund designated "water quality enhancement account," and other money for deposit therein as provided in this chapter shall be credited to the water quality enhancement account.

(e) The water quality enhancement account may be used for construction of treatment works in any manner consistent with the provisions of the constitution and this code.

(f) All proceeds from the sale of the $400 million in water development bonds authorized by Article III, Section 49-d-2, of the Texas Constitution for the purposes of state participation in the acquisition and development of facilities, together with all

proceeds, excluding accrued interest, from the sale, refunding, or prepayment of political subdivision bonds acquired in carrying out the purposes of the state participation program, shall be deposited in a special account designated as the state participation account created in the development fund. Other money designated for deposit in that account by this chapter and Chapter 16 of this code shall be deposited in the state participation account. Accrued interest from the proceeds of the sale, refunding, or prepayment of political subdivision bonds shall be deposited in the interest and sinking fund.

Text of subsec. (g) as amended by Acts 1987, 70th Leg., ch. 420, Sec. 4

(g) The state participation account may be used for any project authorized in Chapter 16 of this code and in any manner consistent with the constitution and this code.

Text of subsec. (g) as amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1

(g) The state participation account may be used for any project defined by Chapter 16 of this code and in any manner consistent with the constitution and this code.

(h) All proceeds from the sale of the $300 million in water development bonds authorized by Article III, Sections 49-d-2, 49-d-6, and 49-d-7, of the Texas Constitution for the purposes of flood control, together with all proceeds, excluding accrued interest, from the sale, refunding, or prepayment of political subdivision bonds acquired in carrying out the purposes of the flood control program, shall be deposited in a special account designated as the flood control account created in the development fund. Other money designated for deposit in that account by this chapter shall be deposited in the flood control account. Accrued interest from the proceeds of the sale, refunding, or prepayment of political subdivision bonds shall be deposited in the interest and sinking fund.

(i) The flood control account may be used for any project and in any manner consistent with the constitution and this code.

(j) Proceeds from the sale of bonds pursuant to Section 17.0111 of this code, together with proceeds, other than accrued interest, from the sale, refunding, or prepayment of political subdivision bonds acquired in carrying out the purposes provided by Subchapter K

of this chapter, shall be deposited in a special account in the development fund designated as the economically distressed areas account, with other money for deposit in that account as provided by this chapter, the General Appropriations Act, or other law of this state. Money from gifts or grants from the United States government, local or regional governments, private sources, or other sources for the purposes of assisting economically distressed areas also may be deposited in the economically distressed areas account. Within the economically distressed areas account, separate accounts may be created for bonds issued for purposes of Article III, Section 49-c, of the Texas Constitution, and bonds issued for purposes of Article III, Section 49-d-1, of the Texas Constitution.

(k) The economically distressed areas account may be used as provided by Subchapter K of this chapter in a manner that is consistent with the constitution and other law.

(l) Net proceeds from the sale of political subdivision bonds owned by the board and deposited in the water development fund may be used:

(1) to create reserve funds for revenue bonds issued by the board pursuant to Subchapter I of this chapter;

(2) to create reserve funds for the water bond insurance program authorized by Article III, Section 49-d-4, of the Texas Constitution;

(3) for the purchase of insurance for reserve funds created under this subsection; or

(4) for any purpose approved by the board.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3155, ch. 828, Sec. 5, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 133, Sec. 2.17; Acts 1987, 70th Leg., ch. 420, Sec. 4, eff. June 17, 1987; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 66, Sec. 5; Acts 1989, 71st Leg., ch. 309, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 624, Sec. 2.15; Acts 1989, 71st Leg., ch. 1062, Sec. 4; Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(35), eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 844, Sec. 5, eff. Aug. 30, 1993.

Sec. 17.073. WATER DEVELOPMENT AND ECONOMICALLY DISTRESSED

AREAS CLEARANCE FUNDS. (a) The Texas Water Development Clearance Fund, referred to as the "clearance fund," is a special fund in the State Treasury. Transfers shall be made from this fund as provided by this subchapter.

(b) The Economically Distressed Areas Clearance Fund is a special fund in the State Treasury. Transfers shall be made from this fund as provided by this subchapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.16.

Sec. 17.074. INTEREST AND SINKING FUND. The Texas Water Development Bonds Interest and Sinking Fund, referred to as the "interest and sinking fund," is a special fund in the State Treasury into which there shall be paid, from sources specified in this chapter, amounts other than amounts required to be paid into the economically distressed areas interest and sinking fund sufficient to:

(1) pay the interest coming due on all outstanding bonds other than bonds covered by Sections 17.0111 and 17.0112 of this code during the ensuing fiscal year;

(2) pay the principal on all bonds other than bonds covered by Sections 17.0111 and 17.0112 of this code that mature during the ensuing fiscal year, plus collection charges and exchanges on the bonds; and

(3) establish a reserve equal to the average annual principal and interest requirements on all outstanding bonds other than bonds covered by Sections 17.0111 and 17.0112 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.16.

Sec. 17.0741. ECONOMICALLY DISTRESSED AREAS INTEREST AND SINKING FUND. (a) The Economically Distressed Areas Interest and Sinking Fund is a special fund in the State Treasury to be used to pay debt service on bonds issued for the purposes provided by Subchapter K of this chapter. The fund is composed of:

(1) proceeds from the sale of political subdivision bonds to the Texas Water Resources Finance Authority in amounts provided by the General Appropriations Act;

(2) money provided by the federal government, the state, counties, or other local governmental entities and by private entities for the purpose of paying debt service on bonds issued for purposes provided by Subchapter K of this chapter; and

(3) any other money deposited to the credit of the fund.

(b) Money shall be paid into the economically distressed areas interest and sinking fund from sources specified in Subsection (a) of this section in amounts sufficient to:

(1) pay the interest coming due on all outstanding bonds during the ensuing fiscal year;

(2) pay the principal on all bonds that mature during the ensuing fiscal year, plus collection charges and exchanges on bonds; and

(3) establish a reserve equal to the average annual principal and interest requirements on all outstanding bonds.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.16.

Sec. 17.075. ADMINISTRATIVE FUND. The Texas Water Development Board Administrative Fund, referred to as the "administrative fund," is a special fund in the State Treasury. From sources specified in this chapter, money shall be credited to this fund in amounts sufficient to pay the administrative expenses of the board as authorized by legislative appropriation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.076. COMBINED FACILITIES OPERATION AND MAINTENANCE FUND. (a) The Combined Facilities Operation and Maintenance Fund is a special fund in the State Treasury.

(b) Money received from the sale of water, standby service, and the lease of land needed for operation and maintenance of facilities shall be credited to this fund. Any of the money which is not needed for operation and maintenance of facilities may be credited to the interest and sinking fund or used to meet contractual obligations

incurred by the board in acquiring facilities.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.077. CREDITS TO CLEARANCE FUNDS. (a) Except as provided by Subsection (b) of this section, and except for proceeds from the sale of bonds and proceeds from the sale, refunding, or prepayment, of political subdivision bonds acquired in carrying out the purposes in Article III, Sections 49-c, 49-d, 49-d-1, 49-d-2, 49-d-6, and 49-d-7, of the Texas Constitution, and the proceeds from the sale, refinancing, or other liquidation of the investments made under Section 17.083 of this code which shall be deposited in the fund that provided the money for the investment, all money received by the board in any fiscal year, including all amounts received as repayment of loans to political subdivisions and interest on those loans, shall be credited to the clearance fund. Money in the clearance fund may be transferred at any time to the interest and sinking fund until the reserve in that fund is equal to the average annual principal and interest requirements on all outstanding bonds.

(b) Any amounts received as repayment of financial assistance made to a political subdivision under Subchapter K of this chapter and interest on that financial assistance shall be deposited to the economically distressed areas clearance fund. Money in the economically distressed areas clearance fund may be transferred at any time to the economically distressed areas interest and sinking fund until the reserve in that fund is equal to the average annual principal and interest requirements on all outstanding bonds.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 133, Sec. 2.07; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 66, Sec. 6; Acts 1989, 71st Leg., ch. 624, Sec. 2.17; Acts 1989, 71st Leg., ch. 1062, Sec. 5.

Sec. 17.078. TRANSFERS AT END OF FISCAL YEAR. (a) Not later than 15 days after the end of each fiscal year, any money credited to the clearance fund at the end of the fiscal year shall be transferred

to the other special funds as prescribed by Sections 17.079 through 17.082 of this code.

(b) Not later than 15 days after the end of each fiscal year, any money credited to the economically distressed areas clearance fund shall be transferred to the other special funds as prescribed by Sections 17.0791 through 17.082 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.17.

Sec. 17.079. TRANSFERS TO INTEREST AND SINKING FUND. (a) The board shall determine:

(1) the amount of interest coming due on all bonds outstanding, except for those dedicated pursuant to Section 17.0111 of this code;

(2) the amount of principal of bonds maturing and becoming payable during the fiscal year, except for those bonds dedicated pursuant to Section 17.0111 of this code; and

(3) the average annual principal and interest requirements on all outstanding bonds, except for those bonds dedicated pursuant to Section 17.0111 of this code.

(b) The comptroller shall transfer to the interest and sinking fund, after taking into account any money and securities on deposit in the interest and sinking fund, an amount necessary to pay:

(1) all principal and interest maturing on the bonds, except for those bonds dedicated pursuant to Section 17.0111 of this code, during the fiscal year;

(2) all collection charges and exchanges on the bonds in Subsection (b)(1) of this section; and

(3) the money sufficient to establish and maintain an additional reserve equal to the average annual principal and interest requirements on all outstanding bonds, except for those bonds dedicated pursuant to Section 17.0111 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.17.

Sec. 17.0791. TRANSFERS TO ECONOMICALLY DISTRESSED AREAS INTEREST AND SINKING FUND. (a) The board shall determine:

(1) the amount of interest coming due on all bonds outstanding dedicated pursuant to Section 17.0111 of this code;

(2) the amount of principal of those bonds maturing and becoming payable during the fiscal year; and

(3) the average annual principal and interest requirements on all outstanding bonds.

(b) The comptroller shall transfer to the economically distressed areas interest and sinking fund, after taking into account any money and securities on deposit in the economically distressed areas interest and sinking fund, an amount necessary to pay:

(1) all principal and interest maturing on the bonds dedicated pursuant to Section 17.0111 of this code during the fiscal year;

(2) all collection charges and exchanges on those bonds; and

(3) the money sufficient to establish and maintain an additional reserve equal to the average annual principal and interest requirements on all outstanding bonds.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.17.

Sec. 17.080. ADDITIONAL FUNDS FOR PAYMENT OF BONDS. (a) If the amount transferred from the clearance fund plus the money and securities in the interest and sinking fund are insufficient to pay the interest coming due and the principal maturing on the bonds during the fiscal year, then after the transfer to the interest and sinking fund of as much money as is available in the clearance fund, the comptroller shall transfer out of the first money coming into the treasury, not otherwise appropriated by the constitution, the amount required to pay principal and interest on the bonds during the fiscal year, except for those bonds dedicated pursuant to Section 17.0111 of this code.

(b) If the amount transferred from the economically distressed areas clearance fund plus the money and securities in the economically distressed areas interest and sinking fund are insufficient to pay the interest coming due and the principal maturing on the bonds dedicated pursuant to Section 17.0111 of this

code during the fiscal year, then after the transfer to the economically distressed areas interest and sinking fund of as much money as is available in the economically distressed areas clearance fund, the comptroller shall transfer out of the first money coming into the treasury, not otherwise appropriated by the constitution, the amount required to pay principal and interest on the bonds during the fiscal year.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.17; Acts 1997, 75th Leg., ch. 1423, Sec. 20.06, eff. Sept. 1, 1997.

Sec. 17.081. TRANSFERS TO ADMINISTRATIVE FUND. If money remains in the clearance fund or the economically distressed areas clearance fund after making the transfers provided in Section 17.079 of this code, then to the extent possible the comptroller shall transfer to the administrative fund an amount sufficient to cover the legislative appropriation for administrative expenses of the board for the fiscal year.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.17.

Sec. 17.082. TRANSFERS TO DEVELOPMENT FUND. If money remains in the clearance fund or the economically distressed areas clearance fund after making the transfers provided in Sections 17.079, 17.0791, and 17.081 of this code, the comptroller shall transfer the balance to the appropriate account in the development fund at the end of each fiscal year to be used for any purpose for which proceeds of bonds in such account may be used.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.17.

Sec. 17.0821. TRANSFERS TO REVOLVING FUNDS. (a) In order to

meet requirements of Title VI of the Federal Water Pollution Control Act, the board may direct the comptroller to transfer amounts from the water quality enhancement account to the state water pollution control revolving fund created by Section 15.601 of this code to provide financial assistance pursuant to this chapter.

(b) In order to meet requirements of any federal legislation or federal agency program under which an additional state revolving fund, as defined in Section 15.602 of this code, has been established, the board may direct the comptroller to transfer amounts from the water supply account, the flood control account, and the economically distressed areas account to such additional state revolving fund to provide financial assistance pursuant to this chapter.

(c) The board shall use the state water pollution control revolving fund in accordance with Section 15.604(a)(4) of this code and the Federal Water Pollution Control Act, Section 603(d)(4), as a source of revenue to be deposited in accordance with this chapter for the payment of principal and interest on water quality enhancement bonds issued by the state, the proceeds of which are deposited into the state water pollution control revolving fund.

(d) In the event amounts are transferred to any additional state revolving fund, as defined in Section 15.602 of this code, pursuant to Subsection (b) of this section, the board shall, to the extent permitted by the federal legislation or federal agency program under which such additional state revolving fund was established, use such additional state revolving fund as a source of revenue to be deposited in accordance with this chapter for the payment of principal and interest on water development bonds issued by the state, the proceeds of which are deposited into such additional state revolving fund.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 2, eff. June 17, 1987.
Amended by Acts 1993, 73rd Leg., ch. 184, Sec. 5, eff. May 19, 1993.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 428 (S.B. 942), Sec. 4, eff. September 1, 2019.

Sec. 17.083. INVESTMENT OF RESERVE MONEY. The board may invest any money credited to the development fund and not immediately

required for its intended use and money in the interest and sinking fund and in the economically distressed areas interest and sinking fund, including the reserve portions of the interest and sinking fund and the economically distressed areas interest and sinking fund, in investments authorized by law for state deposits under Section 404.024, Government Code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 7, Sec. 2, eff. March 24, 1987; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 308, Sec. 2, eff. June 14, 1989; Acts 1989, 71st Leg., ch. 624, Sec. 2.17; Acts 1993, 73rd Leg., ch. 477, Sec. 8, eff. Aug. 30, 1993.

Sec. 17.084. LIMITATION ON BOARD INVESTMENT. The board is bound to the extent that the resolution authorizing the issuance of the bonds further restricts the investment of money in bonds of the United States.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.085. SALE OF SECURITIES. All of the bonds and obligations owned in the interest and sinking fund, in the economically distressed areas interest and sinking fund, or in the development fund are defined as securities. The board may sell securities owned in the interest and sinking fund, in the economically distressed areas interest and sinking fund, or in any account in the development fund at the governing market price.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.17.

Sec. 17.086. TRANSFERS TO BE MADE BY COMPTROLLER. The comptroller shall make the transfers required by this subchapter.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.0871. SALE OF POLITICAL SUBDIVISION BONDS TO THE TEXAS WATER RESOURCES FINANCE AUTHORITY. (a) Notwithstanding any other provision of this chapter, the board may sell to the Texas Water Resources Finance Authority any political subdivision bonds purchased with money in the development fund or the agricultural water conservation fund and may apply the proceeds of the sale in the manner provided by this section.

(b) The board shall sell the political subdivision bonds at the price and under the terms that it determines to be reasonable.

(c) The board may sell political subdivision bonds to the Texas Water Resources Finance Authority without making a previous offer to the political subdivisions and without advertising, soliciting, or receiving bids for the sale.

(d) The board may enter into a contract with the Texas Water Resources Finance Authority to sell to the authority political subdivision bonds that are not owned by the board. For bonds sold under this subsection, the contract may provide that the board will receive from the Texas Water Resources Finance Authority the sales price for the political subdivision bonds in exchange for the board's agreement to transfer to the authority political subdivision bonds subsequently acquired by the board and to pay to the authority from the investment income received on the development fund or the agricultural water conservation fund, as applicable, an amount equal to the proportionate share of the investment income attributable to the money used to purchase the political subdivision bonds.

(e) Proceeds from the sale excluding accrued interest may be used by the board together with other available money including money in the interest and sinking fund and reserve fund and other amounts that are pledged to repayment of bonds to be discharged, paid, or redeemed, to discharge, pay, or redeem, in whole or in part, outstanding water development bonds, water quality enhancement bonds, agricultural water conservation bonds, and obligations of the board under contracts entered into under Subchapter E of Chapter 16 of this code.

(f) Money to be used to make discharges, payments, or redemptions under Subsection (e) of this section may be deposited by the board with a paying agent or trustee selected by the board. The board may enter into an escrow or similar agreement with the paying

agent or trustee with respect to the safekeeping, investment, reinvestment, administration, and disposition of the money on terms and conditions that the board considers reasonable.

(g) The accrued interest portion of proceeds from the sale of political subdivision bonds shall be disposed of as otherwise provided by this chapter. Money not applied to discharges, payments, or redemptions shall be deposited in the development fund, the administrative fund, the water assistance fund, or the agricultural water conservation fund, as appropriate, to be used for the purposes provided by law.

(h) As part of the sales agreement with the Texas Water Resources Finance Authority, the board by contract may agree to perform the functions required to ensure that the political subdivision pays the debt service on the political subdivision bonds and observes the conditions and requirements stated in those bonds.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 4, eff. June 20, 1987. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 28, eff. Sept. 1, 2001.

SUBCHAPTER D. ASSISTANCE TO POLITICAL SUBDIVISIONS FOR WATER SUPPLY PROJECTS

Sec. 17.121. FINANCIAL ASSISTANCE. The water supply account may be used by the board to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of water supply projects, including those projects initiated for the sole purpose of conservation as defined in Section 17.001(23)(B) of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1062, Sec. 6.

Sec. 17.122. APPLICATION FOR ASSISTANCE. (a) In an application to the board for financial assistance for a water supply project, the applicant shall include:

(1) the name of the political subdivision and its principal officers;

(2) a citation of the law under which the political subdivision operates and was created;

(3) a description of the water supply project for which the financial assistance will be used;

(4) the total cost of the water supply project;

(5) the amount of state financial assistance requested;

(6) the plan for repaying the total cost of the water supply project;

(7) the method for obtaining the financial assistance, whether by purchase of bonds or purchase of other obligations of the political subdivision;

(8) the water conservation plan required by Section 16.4021; and

(9) any other information the board requires.

(b) If an applicant has a program of water conservation, he shall state in his application that he has such a program and shall describe that program in the manner required by board rules.

(c) If the applicant claims an exemption under Section 16.4021, the applicant shall state the exemption in the application and provide information relating to that exemption as provided by board rules.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 1.03; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 12, eff. September 1, 2019.

Sec. 17.123. FINDINGS REGARDING PERMITS. (a) The board shall not release funds for the construction of that portion of a project that proposes surface water or groundwater development until the executive administrator makes a written finding:

(1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water which the water supply project will provide; or

(2) that an applicant proposing groundwater development has the right to use water that the water supply project will provide.

(b) The board may release funds for the costs of planning,

engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs before making the finding required under Subsection (a) if the executive administrator determines that a reasonable expectation exists that the finding will be made before the release of funds for construction.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.053, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 246, Sec. 2, eff. Aug. 31, 1987; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 1234, Sec. 29, eff. Sept. 1, 2001.

Sec. 17.124. CONSIDERATIONS IN PASSING ON APPLICATIONS. In passing on an application from a political subdivision for financial assistance for a water supply project, the board shall consider:

(1) the needs of the area to be served by the water supply project, the benefit of the water supply project to the area, the relationship of the water supply project to the overall, statewide water needs, and the relationship of the water supply project to the state water plan; and

(2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the water supply project, including interest.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 2.12; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 477, Sec. 9, eff. Aug. 30, 1993.

Sec. 17.1245. EVALUATION. In passing on an application for financial assistance from a retail public utility that provides potable water service to 3,300 or more connections, the board shall:

(1) evaluate for compliance with the board's best management practices the utility's water conservation plan required under Section 13.146; and

(2) issue a report to a utility detailing the results of the evaluation conducted under Subdivision (1).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1139 (H.B. 3605), Sec. 2,

eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 84 (S.B. 1574), Sec. 2, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.45, eff. September 1, 2019.

Sec. 17.125. APPROVAL OF APPLICATION. (a) The board by resolution may approve an application if, after considering the factors listed in Section 17.124 of this code and any other relevant factors, the board finds:

(1) that the public interest requires state assistance in the water supply project;

(2) and that in its opinion the revenue or taxes pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision during the succeeding period of not more than 50 years.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(7), eff. September 1, 2019.

(b-1) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(7), eff. September 1, 2019.

(b-2) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(7), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(7), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(7), eff. September 1, 2019.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(7), eff. September 1, 2019.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(7), eff. September 1, 2019.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 1.04; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 477, Sec. 10, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 688, Sec. 3, eff. June 20, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.19, eff.

September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(7), eff. September 1, 2019.

Sec. 17.127. LIMITATION ON USE OF FUNDS. If there is insufficient money available to fund all applications under this subchapter, the board shall give preference to applications for political subdivisions that the board finds cannot reasonably finance the project without assistance from the state.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.128. RECREATIONAL ACCESS. If the board is providing financial assistance for a water storage project, it must also find affirmatively that the applicant has a plan to provide adequate public recreational access areas to suitable recreational resources.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER E. PROVISIONS GENERALLY APPLICABLE TO FINANCIAL ASSISTANCE

Sec. 17.171. DEFINITION. In this subchapter, "project" includes water supply projects, treatment works, and flood control measures.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.172. APPLICABILITY. This subchapter applies to financial assistance made available from the water supply account, the water quality enhancement account, the flood control account, and the economically distressed areas account under Subchapters D, F, G, and K of this chapter.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.18.

Sec. 17.173. METHOD OF FINANCIAL ASSISTANCE. The board may provide financial assistance by using money in the water supply account, the water quality enhancement account, the flood control account, and the economically distressed areas account to purchase bonds or other obligations issued by the political subdivision to finance the project. The board may purchase bonds or other obligations that are secondary or subordinate to other bonds or obligations issued by the political subdivision, including outstanding prior lien bonds previously issued by the political subdivision when this will avoid or reduce the necessity for issuing junior lien bonds for subsequent sale to the board. The board may purchase refunding bonds or obligations of a political subdivision issued for the purpose of refunding bonds or other obligations issued for the construction of any projects described in this chapter.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.18; Acts 1991, 72nd Leg., ch. 516, Sec. 5, eff. Sept. 1, 1991.

Sec. 17.174. CONDITIONAL APPROVAL. The board may make binding commitments to provide financial assistance for any project in accordance with this code conditioned on the future availability of money in the appropriate account of the development fund.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.175. BOND MATURITY. The board may not purchase bonds or other securities which have a maturity date more than 50 years from the date of issuance.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.176. INTEREST RATE. (a) Except as provided in Subsection (b) of this section, bonds and securities purchased by the

board on or after September 1, 1977, with money derived from the sale of bonds issued under this chapter shall bear interest at the lending rate. The bonds shall bear coupons evidencing interest at a rate or combination of rates that will approximate the lending rate as nearly as the board deems practicable. The lending rate shall be affected by the payment of premiums or the deduction of discounts as necessary.

(b) Bonds and securities purchased by the board pursuant to applications for financial assistance approved by the board prior to September 1, 1977, shall bear interest at the rate prescribed by Subsection (a) of this section prior to this amendment. Outstanding prior lien bonds purchased by the board under Section 17.173 of this code need not bear the interest rate provided in Subsection (a) of this section, but the board may pay such price or prices for outstanding prior lien bonds which in its discretion will accomplish the objective of that section.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.1765. CERTIFICATION OF APPLICATION. Before the board may purchase bonds or other obligations issued by a political subdivision, the political subdivision must certify to the board that the application for financial assistance filed with the board was approved in an open meeting.

Added by Acts 1997, 75th Leg., ch. 297, Sec. 1, eff. Sept. 1, 1997.

Sec. 17.177. APPROVAL AND REGISTRATION. The board shall not purchase any bonds or securities that have not been approved by the attorney general and registered by the comptroller.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.178. BONDS INCONTESTABLE. The bonds or other securities issued by a political subdivision are valid, binding, and incontestable after:

(1) approval by the attorney general;
(2) registration by the comptroller; and
(3) purchase by and delivery to the board.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.179. SECURITY FOR BONDS. (a) Except as provided by Subsection (c) of this section, bonds purchased by the board shall be supported by:

(1) all or part of the net revenue from the operation of the project;
(2) taxes levied by the political subdivision for the purpose; or
(3) a combination of taxes and net revenue, and revenue from other available sources.

(b) The board may require that the bonds be supported both by taxes and by net revenue from the operation of the project in any ratio the board considers necessary to fully secure the investment. The board shall establish other conditions and requirements it considers to be consistent with sound investment practices and in the public interest.

(c) Bonds purchased by the board under Subchapter K of this chapter may be additionally supported by money provided to the political subdivision by the federal or state government and by private donations.

(d) With respect to projects for which financial assistance is made available under this chapter, the Texas Water Development Board shall file semiannually with the Bond Review Board a report on the performance of loans made by the Texas Water Development Board in connection with the projects. The Bond Review Board shall review the reports filed by the Texas Water Development Board under this subsection to assess the adequacy of the security for the bonds purchased. The filing dates and the contents of the reports must comply with any rules adopted by the Bond Review Board.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.18; Acts 1991, 72nd Leg., 1st C.S., ch. 4, Sec. 13.01, eff. Aug. 22, 1991; Acts 2001, 77th Leg., ch. 1420, Sec. 8.408, eff. Sept. 1, 2001.

Sec. 17.181. SALE OF BONDS BY BOARD. The board may sell or dispose of bonds purchased with money in the water supply account, the water quality enhancement account, the flood control account, or the economically distressed areas account.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 2.18.

Sec. 17.182. PROCEEDS FROM SALE. Unless used to pay debt service on bonds issued under this chapter, the proceeds from the sale of political subdivision bonds held by the board either shall be credited to the account from which financial assistance was made to the political subdivision, except that accrued interest shall be credited to the interest and sinking fund, or shall be deposited to the credit of the Texas Water Development Fund II, established within the state treasury pursuant to Section 49-d-8, Article III, Texas Constitution. However, no such proceeds shall be deposited to the credit of the Texas Water Development Fund II unless the executive administrator certifies to the board that the transfer of such proceeds into the Texas Water Development Fund II will not cause the board, in the fiscal year the transfer is made, to direct the comptroller to transfer out of the first money coming into the state treasury during that fiscal year funds sufficient for the payment of principal of or interest on water development bonds, other than water development bonds issued for the purposes described in Subsection (e), Section 49-d-7, Article III, Texas Constitution, coming due in that fiscal year.

Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 5.08.

Sec. 17.183. CONSTRUCTION CONTRACT REQUIREMENTS. (a) The governing body of each political subdivision receiving financial assistance from the board shall require in all contracts for the construction of a project:

(1) that each bidder furnish a bid guarantee equivalent to five percent of the bid price;

(2) that each contractor awarded a construction contract

furnish performance and payment bonds:

(A) the performance bond shall include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices; and

(B) the performance and payment bonds shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the engineer of the political subdivision;

(3) that payment be made in partial payments as the work progresses;

(4) that each partial payment shall not exceed 95 percent of the amount due at the time of the payment as shown by the engineer of the project, but, if the project is substantially complete, a partial release of the five percent retainage may be made by the political subdivision with approval of the executive administrator;

(5) that payment of the retainage remaining due upon completion of the contract shall be made only after:

(A) approval by the engineer for the political subdivision as required under the bond proceedings;

(B) approval by the governing body of the political subdivision by a resolution or other formal action; and

(C) certification by the executive administrator in accordance with the rules of the board that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with approved plans and specifications;

(6) that no valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications;

(7) that, if a political subdivision receiving financial assistance under Subchapter K of this chapter, labor from inside the political subdivision be used to the extent possible; and

(8) that the contract include a requirement that iron and steel products used in the project be produced in the United States, unless:

(A) such products are not:

(i) available in sufficient quantities;

(ii) readily available; or

(iii) of a satisfactory quality; or

(B) the use of such products will increase the total cost of the project by more than 20 percent.

(b) Plans and specifications submitted to the board in connection with an application for financial assistance must include a seal by a licensed engineer affirming that the plans and specifications are consistent with and conform to current industry design and construction standards.

(c) For the purposes of Subsections (a)(8) and (d):

(1) Repealed by Acts 2017, 85th Leg., R.S., Ch. 597 (S.B. 1289), Sec. 5, eff. September 1, 2017.

(2) Repealed by Acts 2017, 85th Leg., R.S., Ch. 597 (S.B. 1289), Sec. 5, eff. September 1, 2017.

(3) "Manufacturing process" means the application of a process to alter the form or function of materials or elements of a product in a manner that adds value and transforms the materials or elements so that a new end product is produced that is functionally different from the product that would result from simple assembly of the materials or elements.

(4) "Produced in the United States" means, in the case of iron and steel products, products for which all manufacturing processes, from initial melting through application of coatings, take place in the United States, except metallurgical processes that involve the refinement of steel additives.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 597 (S.B. 1289), Sec. 5, eff. September 1, 2017.

(e) This section shall be applied in a manner consistent with this state's obligations under any international agreement.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 309, Sec. 2, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 624, Sec. 2.18; Acts 2003, 78th Leg., ch. 1057, Sec. 6, eff. June 20, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.08, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1139 (H.B. 3605), Sec. 3, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 597 (S.B. 1289), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 597 (S.B. 1289), Sec. 4, eff.

September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 597 (S.B. 1289), Sec. 5, eff. September 1, 2017.

Sec. 17.184. FILING CONSTRUCTION CONTRACT. The political subdivision shall file with the board a certified copy of each construction contract it enters into for the construction of all or part of a project. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.185. INSPECTION OF PROJECTS. (a) The board may inspect the construction of a project at any time to assure that the contractor is substantially complying with the approved engineering plans and specifications of the project.

(b) Inspection of a project by the board does not subject the state to any civil liability.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.09, eff. September 1, 2013.

Sec. 17.186. ALTERATION OF PLANS. After the executive administrator approves of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the executive administrator authorizes the alteration in accordance with rules of the board. For a waste water treatment plant or other facility required to have commission approval of the plans and specifications, the commission must give its approval before a substantial or material alteration is made in those plans.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.187. CERTIFICATE OF APPROVAL. The executive administrator may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the project according to approved plans and specifications; or

(2) failure to comply with any term of the contract.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.10, eff. September 1, 2013.

Sec. 17.188. OBTAINING FINANCIAL ASSISTANCE. (a) To obtain financial assistance under this chapter, a political subdivision may authorize and issue revenue bonds for the purpose of constructing projects and sell those bonds to the board in amounts as determined by the governing body of the political subdivision and approved by the board.

(b) Notwithstanding the provisions of any general or special law or charter provisions to the contrary, a political subdivision may authorize, issue, and sell its revenue bonds as provided by this section and create any encumbrance in connection with those bonds by a majority vote of the governing body of the political subdivision without the necessity of an election.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 1420, Sec. 8.409, eff. Sept. 1, 2001.

Sec. 17.189. CONSIDERATIONS FOR CERTAIN FINANCIAL ASSISTANCE. (a) If financial assistance is provided under Subchapter F, I, or K of this chapter, any treatment works to be financed under the application must consider cost-effective innovative, nonconventional methods of treatment such as rock reed, root zone, ponding, irrigation, or other methods that may have been developed by the National Aeronautics and Space Administration or the Tennessee Valley

Authority.

(b) Before granting an application for financial assistance under Subchapter F, I, or K of this chapter that includes financing for treatment works, the board must find that any treatment works to be financed under the application will consider cost-effective innovative, nonconventional methods of treatment such as rock reed, root zone, ponding, irrigation, or other methods that may have been developed by the National Aeronautics and Space Administration or the Tennessee Valley Authority.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.19.

SUBCHAPTER F. FINANCIAL ASSISTANCE FOR WATER QUALITY ENHANCEMENT PURPOSES

Sec. 17.271. PURPOSE. The purpose of this subchapter is to provide for making loans of water quality enhancement funds authorized by Article III, Sections 49-d-1, 49-d-2, 49-d-6, and 49-d-7, of the Texas Constitution to political subdivisions of the state for the construction of treatment works.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 2.07; Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 66, Sec. 6; Acts 1989, 71st Leg., ch. 1062, Sec. 5.

Sec. 17.272. FINANCIAL ASSISTANCE. The board may use water quality enhancement funds to provide financial assistance to political subdivisions for purposes of water quality enhancement.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.273. AUTHORITY OF POLITICAL SUBDIVISION. A political subdivision may apply to the board for financial assistance and may use water quality enhancement funds for construction of treatment works in the manner provided in this subchapter.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1,

1987.

Sec. 17.274. APPLICATION FOR ASSISTANCE. (a) In an application to the board for financial assistance for water quality enhancement purposes, the applicant shall include:

(1) the name of the political subdivision and its principal officers;

(2) a citation of the law under which the political subdivision operates and was created;

(3) a description of the treatment works for which the financial assistance will be used;

(4) the estimated total cost of construction of the treatment works;

(5) the amount of state financial assistance requested;

(6) the method for obtaining the financial assistance, whether by purchase of bonds or purchase of other obligations of the political subdivision;

(7) the plan for repaying the financial assistance;

(8) the water conservation plan required by Section 16.4021; and

(9) any other information the board requires.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(8), eff. September 1, 2019.

(c) If the applicant claims an exemption under Section 16.4021, the applicant shall state the exemption in the application and provide information relating to that exemption as provided by board rules.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 13, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(8), eff. September 1, 2019.

Sec. 17.275. CONSIDERATIONS IN PASSING ON APPLICATION. In passing on an application from a political subdivision for financial

assistance for water quality enhancement purposes, the board shall consider:

(1) the water quality needs of the waters into which effluent from the treatment works will be discharged, the benefit of the treatment works to such water quality needs, the relationship of the treatment works to the overall, statewide water quality needs; and the relationship of the treatment works to water quality planning for the state;

(2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the treatment works, including interest; and

(3) whether the political subdivision has been designated, pursuant to Section 26.082 of this code, to provide a regional system to serve all or part of the waste disposal needs of a defined area, the development of such systems being the declared policy of the legislature.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 477, Sec. 12, eff. Aug. 30, 1993.

Sec. 17.276. ACTION ON APPLICATION. (a) After an application is received for financial assistance, the executive administrator shall submit the application to the board together with comments and recommendations concerning the best method of making financial assistance available.

(b) The board may grant the application in whole or part or may deny the application.

(c) The board has the sole responsibility and authority for selecting the political subdivisions to whom financial assistance may be provided for treatment works and the amount of any such assistance.

(d) The board shall review and approve or disapprove plans and specifications for all sewerage collection, treatment, and disposal systems for which financial assistance is provided in any amount from water quality enhancement funds or funds granted under the Federal Water Pollution Control Act, as amended, in a manner that will satisfy commission requirements for design criteria and permit conditions that apply to construction activities.

(e) The deliberations, proposals, decisions, and other actions

of the board under this subchapter do not require the concurrence or approval of any other governmental agency, board, commission, council, political subdivision, or other governmental entity.

(f) When bonds or other obligations are purchased by the board, water quality enhancement funds shall be delivered to the political subdivisions entitled to receive them and shall be used only to pay construction costs of treatment works approved in this subchapter.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 516, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 477, Sec. 13, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 1057, Sec. 7, eff. June 20, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.11, eff. September 1, 2013.

Sec. 17.277. APPROVAL OF APPLICATION. (a) The board by resolution may approve an application if, after considering the factors listed in Section 17.275 of this code and any other relevant factors, the board finds that the public interest will benefit from state assistance in the financing of the treatment works.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(9), eff. September 1, 2019.

(b-1) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(9), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(9), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(9), eff. September 1, 2019.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(9), eff. September 1, 2019.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(9), eff. September 1, 2019.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 477, Sec. 14, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 688, Sec. 4, eff. June 20, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(9), eff. September 1, 2019.

Sec. 17.278. FINDINGS REGARDING PERMITS. If an application includes a proposal for a wastewater treatment plant, the board may not deliver funds for the wastewater treatment plant until the applicant has obtained a permit for the construction and operation of the plant and approval of the plans and specifications for the plant from the commission. If an application includes a proposal for a wastewater treatment plant that is located outside the jurisdiction of this state and that is not subject to the permitting authority of the commission, the board may not deliver funds for the wastewater treatment plant until after the board reviews the plans and specifications in coordination with the commission and finds that the wastewater treatment plant is capable of producing effluent that will meet federal and Texas-approved water quality standards and if effluent produced will result in water being available for use in or for the benefit of Texas.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1010, Sec. 5.09, eff. Sept. 1, 1997.

Sec. 17.279. LIMITATION ON USE OF FUNDS. If there is insufficient money available to fund all applications under this subchapter, the board shall give preference to applications for political subdivisions that the board finds cannot reasonably finance the treatment works without assistance from the state.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER G. FINANCIAL ASSISTANCE FOR FLOOD CONTROL

Sec. 17.771. PURPOSE. The purpose of this subchapter is to provide for making loans of flood control funds authorized by Article III, Sections 49-d-2, 49-d-6, and 49-d-7, of the Texas Constitution, to political subdivisions of the state for the development of floodplain management plans and for structural and nonstructural flood control projects.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 2.21. Amended by Acts

1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 66, Sec. 6; Acts 1989, 71st Leg., ch. 1062, Sec. 5.

Sec. 17.772. FINANCIAL ASSISTANCE. The board may use flood control funds to provide financial assistance to political subdivisions for purposes of structural and nonstructural flood control and the development of floodplain management plans.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.773. APPLICATION FOR ASSISTANCE. In an application to the board for financial assistance for flood control purposes, the applicant shall include:

(1) the name of the political subdivision and its principal officers;

(2) a citation of the law under which the political subdivision operates and was created;

(3) a description of the flood control measures for which the financial assistance will be used;

(4) the estimated total cost of the measures;

(5) the amount of state financial assistance requested;

(6) the method for obtaining the financial assistance, whether by purchase of bonds or purchase of other obligations of the political subdivision;

(7) the plan for repaying the financial assistance; and

(8) any other information the board requires.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.774. CONSIDERATIONS IN PASSING ON APPLICATION. In passing on an application from a political subdivision for financial assistance for flood control purposes, the board shall consider:

(1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits

of those projects to the other areas;

(2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the project, including interest;

(3) the capacity of the watershed to accommodate stormwater runoff;

(4) the impact of the project on watershed capacity along the entire watershed and the degree to which that capacity was considered in planning the project;

(5) whether the project will increase or decrease the volume or rate of stormwater runoff into any channel in the watershed;

(6) the effect of the project on surface water elevations within the watershed and any downstream watershed;

(7) the relationship of the project to any floodplain management plan for the watershed; and

(8) whether adequate consideration was given to the effects of the project with regard to erosion and sediment control.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

Sec. 17.775. ACTION ON APPLICATION. (a) After an application is received for financial assistance for flood control purposes, the executive administrator shall submit the application to the board together with comments and recommendations concerning the best method of making financial assistance available.

(b) The board may grant the application in whole or part or may deny the application.

(c) The board has the sole responsibility and authority for selecting the political subdivisions to whom financial assistance may be provided and the amount of any such assistance.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 516, Sec. 7, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.12, eff. September 1, 2013.

Sec. 17.776. APPROVAL OF APPLICATION. The board by resolution may approve an application if, after considering the factors listed in Section 17.774 of this code and other relevant information, the board finds:

(1) that the public interest requires state participation in the project;

(2) that in its opinion the taxes or revenues pledged by the political subdivision will be sufficient to meet all obligations assumed by the political subdivision;

(3) if the project would increase the volume or rate of stormwater runoff, that adequate consideration was given to alternative approaches that would decrease or hold constant the volume or rate of stormwater runoff;

(4) that the project proposed in the application will not increase the peak water surface elevation of any portion of any stream within the watershed or within any downstream watershed; and

(5) that adequate consideration was given to the effects of the project with regard to erosion and sediment control.

Amended by Acts 1987, 70th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER I. REVENUE BOND PROGRAM

Sec. 17.851. PURPOSE. The purpose of this subchapter is to provide for the benefit of the public additional methods for financing the conservation and development of water resources of this state including an additional method for making financial assistance available to participants in the conservation and development of water resources of this state. This financial assistance is made available on terms and conditions prescribed by this subchapter, and it is found and determined that this subchapter is in furtherance of a public purpose.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 3, eff. June 17, 1987.

Sec. 17.852. DEFINITIONS. In this subchapter:

(1) "Acquired obligations" means obligations of participants acquired under this subchapter.

(2) "Acquired obligations resolution" means the resolution,

order, ordinance, or similar instrument duly adopted or passed by the governing body of a participant providing for payments of principal and interest to be made by the participant to the board and includes sufficient money to pay the principal of, premium on, if any, and interest on the acquired obligations and to maintain the funds established or required to be established by the acquired obligations resolution.

(3) "Fund" means the Texas water resources fund.

(4) "Participant" means a political subdivision or agency of the state or a nonprofit corporation organized pursuant to Chapter 67, that is authorized to finance projects.

(5) "Project" includes water supply projects, treatment works, and flood projects, as defined by Section 15.531 or 16.451.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 3, eff. June 17, 1987.
Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.60, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 4.01, eff. June 13, 2019.

Sec. 17.853. TEXAS WATER RESOURCES FUND. (a) The Texas water resources fund is in the State Treasury.

(b) The fund shall be administered by the board in accordance with this subchapter, and the board shall create accounts within the fund that will facilitate the conservation of water resources and the payment of revenue bonds issued for the conservation of water resources.

(c) The board may use the fund only:

(1) to provide state matching funds for federal funds provided to the state water pollution control revolving fund or to any additional state revolving fund created under Subchapter J, Chapter 15;

(2) to provide financial assistance from the proceeds of taxable bond issues to water supply corporations organized under Chapter 67, and other participants;

(3) to provide financial assistance to participants for the construction of water supply projects and treatment works;

(4) to provide financial assistance for an interim

construction period to participants for projects for which the board will provide long-term financing through the water development fund;

(5) to provide financial assistance for water supply and sewer service projects in economically distressed areas as provided by Subchapter K, Chapter 17, to the extent the board can make that assistance without adversely affecting the current or future integrity of the fund or of any other financial assistance program of the board;

(6) to provide funds to the water infrastructure fund created under Section 15.973;

(7) to provide funds to the state water implementation revenue fund for Texas;

(8) to provide funds to the flood infrastructure fund created under Section 15.533; and

(9) to provide funds to the Texas infrastructure resiliency fund created under Section 16.452.

(d) Money in the fund may be invested by the board as permitted by this subchapter, other applicable law, or as provided by resolutions authorizing the issuance of revenue bonds.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 3, eff. June 17, 1987. Amended by Acts 1989, 71st Leg., ch. 624, Sec. 2.20; Acts 1991, 72nd Leg., ch. 516, Sec. 8, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 184, Sec. 4, eff. May 19, 1993; Acts 1999, 76th Leg., ch. 62, Sec. 18.61, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 4.18, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1275, Sec. 3(46), eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.13, eff. November 5, 2013.

Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 4.02, eff. June 13, 2019.

Sec. 17.854. METHODS OF FINANCIAL ASSISTANCE. The board may use the fund to acquire obligations of political subdivisions in accordance with the purposes stated in Section 17.853 of this code.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 3, eff. June 17, 1987.

Sec. 17.855. FINANCIAL ASSISTANCE BY ACQUISITION OF ACQUIRED OBLIGATIONS. (a) In an application to the board for financial assistance through the acquisition of acquired obligations, the participant shall include:

(1) the name of the participant and its principal officer or officers;

(2) a citation of the law under which the participant was created, operates, and proposes to issue its obligations to be acquired by the board;

(3) the total cost of the project;

(4) the amount of state financial assistance requested;

(5) the plan for paying the principal of and interest on its obligations to be acquired by the board;

(6) the water conservation plan required by Section 16.4021; and

(7) any other information the board requires in order to perform its duties and to protect the public interest.

(b) The board may not accept an application for financial assistance unless it is submitted in writing and subscribed to in affidavit form by an official representative of the participant. The board shall prescribe the affidavit form in its rules.

(c) The board may require additional factual material from an applicant.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 3, eff. June 17, 1987.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 14, eff. September 1, 2019.

Sec. 17.856. CONSIDERATION IN PASSING ON APPLICATION FOR FINANCIAL ASSISTANCE. In passing on an application for financial assistance for a participant, the board shall consider:

(1) the needs of the area to be served by the project;

(2) the availability to the participant of revenues, taxes, or a combination of revenues and taxes for payment of the acquired obligations of the participant; and

(3) the costs to be incurred in the development, construction, and operation of the project.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 3, eff. June 17, 1987.

Sec. 17.857. APPROVAL OF APPLICATION. (a) The board by resolution may approve an application if the board finds:

(1) that the public interest requires state participation in the project; and

(2) that, in its opinion, the revenue, taxes, or combination of revenue and taxes pledged by the participant will be sufficient to pay the principal of and interest on the acquired obligations until the acquired obligations are fully paid.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(10), eff. September 1, 2019.

(b-1) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(10), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(10), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(10), eff. September 1, 2019.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 3, eff. June 17, 1987.
Amended by Acts 2003, 78th Leg., ch. 688, Sec. 5, eff. June 20, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(10), eff. September 1, 2019.

Sec. 17.858. ACQUISITION OF ACQUIRED OBLIGATIONS. (a) If the board approves an application for financial assistance under this subchapter and is to purchase acquired obligations from a participant, the acquired obligations resolution must:

(1) provide for development, construction, and operation of the project by the participant or a person contracting with the participant; and

(2) provide that the participant shall make sufficient payments to the board to service the acquired obligations from:

(A) all or part of the revenues from the ownership or operation of the project;

(B) all or part of any other revenues or funds that may lawfully be pledged by the participant;

(C) taxes levied by the participant or other users of

the project; or

(D) any combination of Paragraphs (A), (B), and (C) of this subdivision.

(b) The acquired obligations purchased by the board pursuant to this subchapter shall bear rates of interest and mature in amounts and at times as may be reasonably expected to provide funds for orderly payment of the revenue bonds issued by the board.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 3, eff. June 17, 1987.

Sec. 17.859. ISSUANCE OF REVENUE BONDS BY THE BOARD. (a) The board may issue its revenue bonds for the purpose of providing money for the fund, and the money in the fund shall be used for acquiring interests in projects and for providing financial assistance to participants in accordance with this subchapter.

(b) The board may issue revenue bonds to refund revenue bonds or bonds and obligations issued or incurred in accordance with other provisions of law, and in addition to the authority granted by this subsection, the board may issue refunding bonds under other applicable law.

(c) The revenue bonds are special obligations of the board payable only from designated income and receipts of the board including principal of and interest paid and to be paid on acquired obligations, other designated obligations held by the board, or income from accounts created within the fund by the board, as determined by the board.

(d) The revenue bonds do not constitute indebtedness of the state as prohibited by the constitution.

(e) The board may require participants to make charges, levy taxes, or otherwise provide for sufficient money to pay acquired obligations.

(f) Revenue bonds issued under this subchapter shall be authorized by resolution of the board and shall have the form and characteristics and bear the designations as are provided in the resolution.

(g) Revenue bonds may:

(1) bear interest at the rate or rates payable annually or otherwise;

(2) be dated;

(3) mature at the time or times, serially, as term, revenue bonds, or otherwise in not more than 50 years from their dates; and

(4) be callable before stated maturity on the terms and at the prices, be in the denominations, be in the form, either coupon or registered, carry registration privileges as to principal only or as to both principal and interest and as to successive exchange of coupon for registered bonds or one denomination for bonds of other denominations, and successive exchange of registered revenue bonds for coupon revenue bonds, be executed in the manner, and be payable at the place or places inside or outside the state, as provided by the resolution;

(5) be issued in temporary or permanent form;

(6) be issued in one or more installments and from time to time as required and sold at a price or prices and under terms determined by the board to be the most advantageous reasonably obtainable; and

(7) be issued on a parity with and be secured in the manner as other revenue bonds authorized to be issued by this subchapter or may be issued without parity and secured differently than other revenue bonds.

(h) All proceedings relating to the issuance of revenue bonds issued pursuant to this subchapter shall be submitted to the attorney general for examination. If the attorney general finds that the revenue bonds have been authorized in accordance with law, he shall approve the revenue bonds, and the revenue bonds shall be registered by the comptroller of public accounts. After the approval and registration, the revenue bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.

(i) The proceeds received from the sale of revenue bonds may be deposited or invested in any manner and in the obligations as may be specified in the resolution or other proceedings authorizing those obligations. Money in the fund or accounts created by this subchapter or created in the resolution or other proceedings authorizing the revenue bonds may be invested in any manner and in any obligations as may be specified in the resolution or other proceedings.

Added by Acts 1987, 70th Leg., ch. 420, Sec. 3, eff. June 17, 1987.

SUBCHAPTER J. AGRICULTURAL WATER CONSERVATION BOND PROGRAM

Sec. 17.871. DEFINITIONS. In this subchapter:

(1) "Bonds" means Texas agricultural water conservation bonds authorized by Article III, Section 50-d, of the Texas Constitution and issued as bonds, notes, or other evidences of indebtedness in accordance with this subchapter.

(2) Repealed by Acts 2003, 78th Leg., ch. 200, Sec. 19(w)(2) and Acts 2003, 78th Leg., ch. 352, Sec. 23(2).

(3) "Eligible lending institution" means a financial institution that makes commercial loans, is either a depository of state funds or an institution of the Farm Credit System headquartered in this state, agrees to participate in a linked deposit program established under Section 17.905 and to provide collateral equal to the amount of linked deposits placed with it, and meets any other requirements established by board rule.

(4) "Fund" means the agricultural water conservation fund authorized by Section 50-d, Article III, of the Texas Constitution.

(5) "Person" means an individual, corporation, partnership, association, or other legal entity that is not a political subdivision.

(6) "Political subdivision" includes a district or authority created under Section 52, Article III, or Section 59, Article XVI, of the Texas Constitution, a municipality, a county, an institution of higher education as defined by Section 61.003, Education Code, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Chapter 67.

(7) Repealed by Acts 2003, 78th Leg., ch. 200, Sec. 19(w)(2) and Acts 2003, 78th Leg., ch. 352, Sec. 23(2).

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 4.19, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1234, Sec. 30, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 19(e), 19(w)(2), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 5, 23(2), eff. Sept. 1, 2003.

Sec. 17.872. ISSUANCE OF BONDS. The board by resolution may provide for the issuance of negotiable bonds, to be known as Texas

agricultural water conservation bonds, in an aggregate principal amount not to exceed $200 million pursuant to Article III, Section 50-d, of the Texas Constitution.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.

Sec. 17.873. CONDITIONS FOR ISSUANCE OF BONDS. (a) Bonds may be issued as various series and issues and shall be on a parity.

(b) Bonds may mature serially or otherwise not later than 50 years after the date on which they are issued.

(c) The bonds may bear no interest or interest at a rate or rates determined in accordance with law.

(d) Rates of interest on bonds may be fixed, variable, floating, adjustable, or otherwise, determined by the board or determined pursuant to any contractual arrangements approved by the board.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.

Sec. 17.874. PERIODIC DETERMINATION OF INTEREST. A bond resolution or order may provide for payment of interest at any time or the periodic determination of interest rates or interest rate periods.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.

Sec. 17.875. PERSONS DESIGNATED TO ACT AS AGENTS OF BOARD. (a) A bond resolution or order may delegate authority to one or more officers, employees, or agents designated by the board to act on behalf of the board during the time bonds are outstanding to:

(1) fix dates, prices, interest rates, and interest payment periods; and

(2) perform other procedures specified in the resolution.

(b) The person designated by the board may adjust the interest on bonds as necessary to permit the bonds to be sold or resold at par in conjunction with secondary market transactions.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.

Sec. 17.876. SECURITY QUALIFICATIONS. The board may take any action necessary to qualify the bonds for offer and sale under the securities laws and regulations of the United States, this state, and other states.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.

Sec. 17.877. 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 board or may contain a mandatory redemption provision.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.

Sec. 17.878. 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 or order authorizing their issuance.

(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 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.

Sec. 17.879. FUNDS. (a) The bond proceeds shall be deposited in the state treasury to the credit of the fund.

(b) In the resolution or order authorizing issuance of bonds, the board may make additional covenants with respect to the bonds and may provide for the flow of funds and the establishment, maintenance, and investment of funds.

(c) By rule or in the resolution or order authorizing issuance of bonds or other resolution or order of the board, the board may establish an interest and sinking fund and may establish accounts in the funds, including an interest and sinking account, and may transfer money among the funds and accounts.

(d) The board may invest and reinvest money in the fund, the interest and sinking fund, and any account therein in any obligations or securities as provided by bond resolutions, orders of the board, and Section 404.024, Government Code.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 19(f), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 6, eff. Sept. 1, 2003.

Sec. 17.880. SALE OF SECURITIES. (a) Loans, bonds of political subdivisions, and other obligations owned by the state and deposited in the fund or in the interest and sinking fund are considered to be securities under this subchapter.

(b) The board may sell securities owned in the interest and sinking fund or in any account in the fund at the governing market price.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 19(g), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 7, eff. Sept. 1, 2003.

Sec. 17.881. SALE OF OBLIGATIONS TO TEXAS WATER RESOURCES FINANCE AUTHORITY. (a) Pursuant to Section 17.0871 and notwithstanding any other provision of this chapter, the board may sell to the Texas Water Resources Finance Authority any loans or bonds of borrower districts or lender districts purchased with money in the fund and may apply the proceeds of the sale in the manner provided by Section 17.0871.

(b) The board shall sell the loans or bonds of political subdivisions at the price and under the terms that it determines to be reasonable.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 19(h), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 8, eff. Sept. 1, 2003.

Sec. 17.882. RESOLUTIONS, ORDERS, ETC. (a) The orders or resolutions of the board that provide for issuing bonds may include

other provisions and covenants that the board determines necessary.

(b) The board may adopt and have executed any other proceedings, agreements, or trust agreements or instruments necessary and convenient in the issuance of bonds.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.

Sec. 17.883. BOND REVIEW BOARD. Bonds may not be issued under this subchapter unless the issuance of the bonds has been reviewed and approved by the bond review board. Prior to issuance of bonds, the board shall estimate demand for conservation programs or projects based on a survey of eligible participants in the program. A summary of this information shall be furnished to the bond review board.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 19(i), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 9, eff. Sept. 1, 2003.

Sec. 17.884. APPROVAL OF ATTORNEY GENERAL. The proceedings relating to the bonds issued under this subchapter are subject to review and approval by the attorney general in the same manner and with the same effects as provided by Chapter 1371, Government Code.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.410, eff. Sept. 1, 2001.

Sec. 17.885. BONDS INCONTESTABLE. After approval of the proceedings relating to bonds issued under this subchapter by the attorney general, registration of the proceedings by the comptroller, and delivery to the purchasers, the bonds are incontestable and constitute general obligations of the state.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.

Sec. 17.886. PAYMENT AND TRANSFERS BY COMPTROLLER. (a) The comptroller shall pay the principal of the bonds as they mature and

the interest on the bonds as it becomes due.

(b) If the money and securities in the interest and sinking fund are insufficient to pay the interest that is due and the principal maturing on the bonds during the fiscal year, the comptroller shall transfer out of the first money coming into the treasury, not otherwise appropriated by the constitution, the amount required to pay principal of and interest on the bonds during the fiscal year.

(c) The comptroller shall make the transfers required by the board's bond resolution or order and this subchapter.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 20.07, eff. Sept. 1, 1997.

Sec. 17.887. REFUNDING BONDS. (a) The board may provide by resolution for the issuance of refunding bonds to refund outstanding bonds issued under this chapter and accrued interest on those bonds.

(b) The board may sell the refunding bonds and use the proceeds to retire the outstanding bonds issued under this chapter, exchange the refunding bonds for the outstanding bonds, or refund the bonds in the manner provided by any other applicable statute, including Chapter 1207, Government Code.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.411, eff. Sept. 1, 2001.

Sec. 17.888. MUTILATED, LOST, OR DESTROYED BONDS. The board may provide for the replacement of mutilated, lost, or destroyed bonds.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.

Sec. 17.889. ELIGIBLE SECURITY. 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 face value.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.

Sec. 17.890. LEGAL INVESTMENTS. The bonds are legal and authorized investments for:

(1) banks;

(2) savings banks;

(3) trust companies;

(4) savings and loan associations;

(5) insurance companies;

(6) fiduciaries;

(7) trustees;

(8) guardians; and

(9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.

Sec. 17.891. TAX EXEMPT BONDS. 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 subchapter 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 the 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 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.

Sec. 17.892. ENFORCEMENT BY MANDAMUS. Payment of the bonds and performance of official duties prescribed by Article III, Section 50-d, of the Texas Constitution and this subchapter may be enforced in a court of competent jurisdiction by mandamus or other appropriate proceedings.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.

Sec. 17.893. SUBCHAPTER CUMULATIVE OF OTHER LAWS. (a) This subchapter is cumulative of other laws on the subject, and the board may use provisions of other applicable laws in the issuance of its bonds and other obligations, but this subchapter is wholly sufficient authority for the issuance of bonds and the performance of all other acts and procedures authorized by this subchapter.

(b) In addition to other authority granted by this subchapter, the board may exercise the powers granted to the governing body of an issuer with regard to issuance of obligations under Chapter 1371, Government Code.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.412, eff. Sept. 1, 2001.

Sec. 17.894. BOND ENHANCEMENT AGREEMENTS; PAYMENT OF EXPENSES. (a) The board at any time and from time to time may 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. 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.

(b) The fees and expenses of the board in connection with the issuance of the bonds and the providing of financial assistance to political subdivisions may be paid from money in the 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 the bonds constitute payments of principal of and interest on the bonds.

(c) 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; agreements, including options, puts, or calls, to hedge payment, currency, rate, spread, or other exposure; or other agreements that further enhance the marketability, security, or creditworthiness of water financial assistance bonds.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 31, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 19(j), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 10, eff. Sept. 1, 2003.

Sec. 17.895. SOURCES OF ASSETS. The fund is composed of:

(1) money and assets, including bond proceeds, attributable to the bonds;

(2) investment income earned on money on deposit in the fund and depository interest earned on money on deposit in the state treasury;

(3) money appropriated by the legislature;

(4) repayments of principal and interest on loans made under this subchapter;

(5) administrative fees charged by the board under the bond program;

(6) money disbursed to the fund from the state water implementation fund for Texas as authorized by Section 15.434; and

(7) any other funds, regardless of their source, that the board directs be deposited to the credit of the fund.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.09, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 7, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 9, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 4.20, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 19(k), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 11, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.14, eff. November 5, 2013.

Sec. 17.896. REPAYMENT PROCEEDS. The board shall designate a

transfer of repayment of principal and interest on a loan made under this subchapter to the fund, the interest and sinking fund, or any account in the funds.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 19(l), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 12, eff. Sept. 1, 2003.

Sec. 17.897. CONSERVATION PROGRAM. (a) A conservation program is:

(1) an agricultural water conservation technical assistance program, including a program for an on-farm soil and water conservation plan developed jointly by a landowner, an operator, and a local soil and water conservation district as provided by Subchapter H, Chapter 201, Agriculture Code;

(2) a research, demonstration, technology transfer, or educational program relating to agricultural water use and conservation;

(3) a precipitation enhancement program in an area of the state where the program, in the board's judgment, would be most effective; and

(4) any other agricultural water conservation program defined by board rule.

(b) The costs of a conservation program eligible for financial assistance under Section 17.899 are the costs of the capital equipment, materials, labor, preparation, installation, or administration directly associated with implementing and completing the program.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 19(m), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 13, eff. Sept. 1, 2003.

Sec. 17.898. CONSERVATION PROJECT. (a) A conservation project is a project that:

(1) improves water use efficiency of water delivery and application on existing irrigation systems;

(2) prepares irrigated land for conversion to dryland conditions;

(3) prepares dryland for more efficient use of natural precipitation;

(4) purchases and installs on public or private property devices designed to indicate the amount of water withdrawn for irrigation purposes;

(5) prepares and maintains land to be used for brush control activities in areas of the state where those activities in the board's judgment would be most effective, including activities conducted under Chapter 203, Agriculture Code; or

(6) implements any other agricultural water conservation project defined by board rule.

(b) The costs of a conservation project eligible for financial assistance under Section 17.899 are the costs of the capital equipment, materials, labor, preparation, installation, or administration directly associated with implementing and completing the project.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 19(n), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 14, eff. Sept. 1, 2003.

Sec. 17.899. ELIGIBLE FUND USES. (a) Money in the fund, excluding money in the interest and sinking fund, may be used by the board to:

(1) provide a grant to a state agency to fund a conservation program or conservation project, including a conservation program that provides funding to a political subdivision or person for a conservation project;

(2) provide a grant or loan to a political subdivision for a conservation program or conservation project;

(3) provide a linked deposit to an eligible financial institution for a loan to a person for a conservation project;

(4) pay for a board conservation program;

(5) make a transfer to the interest and sinking fund;

(6) pay the costs of a bond issuance; and

(7) pay for a board expense in administering the agricultural water conservation program under this subchapter.

(b) Money in the interest and sinking fund may be used for the payment of bonds or, to the extent there are funds in excess of bond

payment requirements, for transfers to the fund, or any other account in the funds.

(c) The board shall transfer back to the state water implementation fund for Texas any money disbursed to the fund as described by Section 17.895(6) if the requirements of Section 15.435 are satisfied.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 477, Sec. 15, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 200, Sec. 19(o), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 15, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.15, eff. November 5, 2013.

Sec. 17.900. GRANT TO STATE AGENCY. (a) A state agency seeking a grant for a conservation program or conservation project must file an application with the board.

(b) In reviewing an application for a grant, the board shall consider:

(1) the commitment of the state agency to water conservation; and

(2) the benefits that will be gained by making the grant.

(c) To approve the grant, the board must find that:

(1) the grant funds will supplement rather than replace money of the state agency;

(2) the public interest is served by providing the grant; and

(3) the grant will further water conservation in the state.

(d) If a state agency is applying for funds that have been provided by legislative appropriation for such state agency, the board shall review the application according to the terms of the legislative appropriation. To approve such grant, the board shall make the determination required by the legislative language.

(e) The board may make money available to a state agency in any manner that it considers feasible, including a grant agreement with the state agency.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 19(p), eff. Sept. 1,

2003; Acts 2003, 78th Leg., ch. 352, Sec. 16, eff. Sept. 1, 2003.

Sec. 17.901. GRANT OR LOAN TO POLITICAL SUBDIVISION. The board may make a grant or loan to a political subdivision for a conservation program or conservation project. A political subdivision seeking a grant or loan must file an application with the board.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 19(q), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 17, eff. Sept. 1, 2003.

Sec. 17.902. REVIEW OF APPLICATION FOR AND APPROVAL OF GRANT. (a) In reviewing an application by a political subdivision for a grant, the board shall consider:

(1) the degree to which the political subdivision has used other available resources to finance the use for which the application is being made;

(2) the willingness and ability of the political subdivision to raise revenue;

(3) the commitment of the political subdivision to water conservation; and

(4) the benefits that will be gained by making the grant.

(b) To approve a grant to a political subdivision, the board must find that:

(1) the grant funds will supplement rather than replace money of the political subdivision;

(2) the public interest is served by providing the grant; and

(3) the grant will further water conservation in the state.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 19(r), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 18, eff. Sept. 1, 2003.

Sec. 17.9021. APPLICATION FOR AND APPROVAL OF LOAN. (a) In reviewing an application by a political subdivision for a loan, the board shall consider the ability of the political subdivision to

repay the loan and whether the loan will further water conservation in this state.

(b) To approve a loan to a political subdivision, the board must determine that:

(1) the public interest is served by providing the loan;

(2) the political subdivision has the ability to repay the loan; and

(3) the loan will further water conservation in the state.

(c) The board by rule shall establish the rate of interest it charges for a loan to a political subdivision.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(s), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 19, eff. Sept. 1, 2003.

Sec. 17.9022. FINANCING OF GRANT OR LOAN FOR POLITICAL SUBDIVISION; DEFAULT; VENUE. The board may make a loan or grant available to a political subdivision in any manner the board considers economically feasible, including purchase of bonds or securities of the political subdivision or execution of a loan or grant agreement with the political subdivision. The board may not purchase bonds or securities that have not been approved by the attorney general and registered by the comptroller.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(s), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 19, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 13, eff. September 1, 2011.

Sec. 17.903. CONTRACT AUTHORITY. (a) A political subdivision may borrow money for the purposes of this subchapter and may adopt necessary rules to carry out this subchapter.

(b) The board shall have the power to enter into any contracts to carry out the provisions of this subchapter.

Added by Acts 1989, 71st Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 32, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 19(t), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 20, eff. Sept. 1, 2003.

Sec. 17.904. LINKED DEPOSIT. A linked deposit is a deposit governed by a written deposit agreement between the board and an eligible lending institution that provides that:

(1) the eligible lending institution pay interest on the deposit at a rate determined by the board;

(2) the state not withdraw any part of the deposit before the expiration of a period set by a written advance notice of the intention to withdraw; and

(3) the eligible lending institution agree to lend the value of the deposit to a person at a maximum rate that is the rate paid by the eligible lending institution to the board plus a maximum of four percent.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(u), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 21, eff. Sept. 1, 2003.

Sec. 17.905. LINKED DEPOSIT PROGRAM. (a) The board by rule may establish an agricultural water conservation linked deposit program in accordance with this subchapter.

(b) An eligible lending institution may participate in the program established under this section as provided by this subchapter.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(u), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 21, eff. Sept. 1, 2003.

Sec. 17.906. APPLICATION BY ELIGIBLE LENDING INSTITUTIONS TO PARTICIPATE IN LINKED DEPOSIT PROGRAM. To participate in the agricultural water conservation linked deposit program, an eligible lending institution must:

(1) solicit loan applications, which must contain a description of an agricultural water conservation project;

(2) review applications to determine if applicants are eligible and creditworthy; and

(3) submit the applications of eligible and creditworthy applicants to the executive administrator with a certification:

(A) of the interest rate applicable to each applicant

by the eligible lending institution; and

(B) of the soil and water conservation district in which an applicant is located by a director of the district that states that:

(i) the applicant of the proposed project has a soil and water conservation plan approved by the district; and

(ii) the project furthers or implements the plan.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(u), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 21, eff. Sept. 1, 2003.

Sec. 17.907. APPROVAL OR REJECTION OF APPLICATION. The board may approve or reject an application of an eligible lending institution to participate in the program. The board may delegate its authority to approve or reject applications to the executive administrator.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(u), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 21, eff. Sept. 1, 2003.

Sec. 17.908. DEPOSIT AGREEMENT. If the board approves an application of an eligible lending institution, the board and the eligible lending institution shall enter into a written deposit agreement. The agreement shall contain the conditions on which the linked deposit is made. On execution of the agreement, the board shall place a linked deposit from the fund with the eligible lending institution in accordance with the agreement. A delay in payment or a default on a loan by an applicant does not affect the validity of the deposit agreement.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(u), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 21, eff. Sept. 1, 2003.

Sec. 17.909. COMPLIANCE. (a) On accepting a linked deposit, an eligible lending institution must lend money to an approved applicant in accordance with the deposit agreement and this subchapter. The eligible lending institution shall forward a compliance report to the board in accordance with board rules. The

board shall adopt rules regarding the compliance report.

(b) The board shall monitor compliance with this subchapter and inform the comptroller of noncompliance on the part of an eligible lending institution.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(u), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 21, eff. Sept. 1, 2003.

Sec. 17.910. STATE LIABILITY PROHIBITED. The state is not liable to an eligible lending institution for payment of the principal, interest, or any late charges on a loan made to an approved applicant. A linked deposit is not an extension of the state's credit within the meaning of any state constitutional prohibition.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(u), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 21, eff. Sept. 1, 2003.

Sec. 17.911. LIMITATIONS ON PROGRAM. (a) The maximum amount of a loan under the linked deposit program is $250,000.

(b) The board may withdraw linked deposits from an eligible lending institution if the institution ceases to be either a state depository or a Farm Credit System institution headquartered in this state.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(u), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 21, eff. Sept. 1, 2003.

Sec. 17.912. RULES. The board shall adopt rules necessary to carry out this subchapter. Applications shall be in the form and manner as provided by board rules.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 19(u), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 352, Sec. 21, eff. Sept. 1, 2003.

SUBCHAPTER K. ASSISTANCE TO ECONOMICALLY DISTRESSED AREAS FOR WATER SUPPLY AND SEWER SERVICE PROJECTS

Sec. 17.921. DEFINITIONS. In this subchapter:

(1) "Economically distressed area" means an area in which:

(A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules;

(B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and

(C) an established residential subdivision was located on June 1, 2005, as determined by the board.

(2) "Financial assistance" means the funds provided by the board to political subdivisions for water supply and sewer services under this subchapter.

(3) "Political subdivision" means a county, municipality, a nonprofit water supply corporation created and operating under Chapter 67, or district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.

(4) "Water conservation" means those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(5) "Sewer services" and "sewer facilities" mean treatment works or individual, on-site, or cluster treatment systems such as septic tanks and include drainage facilities and other improvements for proper functioning of the sewer services and other facilities.

(6) "Economically distressed areas account" means the economically distressed areas account in the Texas Water Development Fund or the economically distressed areas program account in the Texas Water Development Fund II.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.21. Renumbered from Sec. 17.881 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(36), eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 979, Sec. 20, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 18.62, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 404, Sec. 38, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 5, eff. September 1, 2005.

Sec. 17.922. FINANCIAL ASSISTANCE. (a) The board shall use the economically distressed areas account to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of water supply and sewer services, including providing funds from the account for the state's participation in federal programs that provide assistance solely for projects intended to serve economically distressed areas.

(b) To the extent practicable, the board shall use money in the economically distressed areas account in conjunction with the other financial assistance available through the board to encourage the use of cost-effective water supply and wastewater systems, including regional systems, to maximize the long-term economic development of political subdivisions eligible for financial assistance under the economically distressed areas program. Any savings derived from the construction of a regional system that includes or serves an economically distressed area project shall be factored into the board's determination of financial assistance for the economically distressed area in a manner that assures the economically distressed area receives appropriate benefits from the savings. In no event shall financial assistance provided from the economically distressed areas account be used to provide water supply or wastewater service to any area that is not an economically distressed area.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.21. Renumbered from Sec. 17.882 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(36), eff. Sept. 6, 1990. Amended by Acts 1993, 73rd Leg., ch. 844, Sec. 6, eff. Aug. 30, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 6, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 1222 (S.B. 2452), Sec. 1, eff. November 5, 2019.

Sec. 17.9225. RESIDENTIAL WATER AND SEWER CONNECTION ASSISTANCE. (a) The legislature finds that, due to public health and sanitation concerns, it is in the public interest to use funds in the economically distressed areas account to provide financial assistance for the costs associated with the initial connection to public water supply and sanitary sewer systems of residences that

otherwise benefit from financial assistance.

(b) A political subdivision may use financial assistance to pay:

(1) the costs of connecting a residence to a public water supply system constructed with financial assistance;

(2) the costs of installing yard water service connections;

(3) the costs of installing indoor plumbing facilities and fixtures;

(4) the costs of connecting a residence to a sanitary sewer system constructed with financial assistance;

(5) necessary connection and permit fees; and

(6) necessary costs related to the design of plumbing improvements described by this subsection.

(c) Assistance under this section shall only be provided to residents who demonstrate an inability to pay for the improvements described in Subsection (b) in accordance with board rules. If the board determines that a resident to whom assistance has been provided is ineligible to receive the assistance, the board may seek reimbursement from the resident. The board shall adopt rules to implement the provisions of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1301 (H.B. 2374), Sec. 1, eff. September 1, 2009.

Sec. 17.9226. USE OF CERTAIN GENERAL OBLIGATION BONDS. The board may:

(1) maximize the effectiveness of the additional general obligation bonds authorized by Section 49-d-14, Article III, Texas Constitution, by using the additional bonds in conjunction with other sources of financial assistance, including nonpublic funds, to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of water supply and sewer services; and

(2) use the additional general obligation bonds authorized by Section 49-d-14, Article III, Texas Constitution, to promote and support public-private partnerships that the board determines:

(A) are financially viable;

(B) will diversify the methods of financing available for water supply and sewer services; and

(C) will reduce reliance on the issuance of bonds supported with general revenue.

Added by Acts 2019, 86th Leg., R.S., Ch. 1222 (S.B. 2452), Sec. 2, eff. November 5, 2019.

Without reference to the amendment of this section, this section was repealed by Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 15, eff. September 1, 2005.

Sec. 17.923. COUNTY ELIGIBILITY FOR FINANCIAL ASSISTANCE. To be eligible for financial assistance under this subchapter, a county:

(1) must have a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available;

(2) must be located adjacent to an international border; or

(3) must be located in whole or in part within 100 miles of an international border and contain the majority of the area of a municipality with a population of more than 250,000.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.21. Renumbered from Sec. 17.883 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(36), eff. Sept. 6, 1990.
Amended by:

Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 16, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 15, eff. September 1, 2005.

Sec. 17.927. APPLICATION FOR FINANCIAL ASSISTANCE. (a) A political subdivision may apply to the board for financial assistance under this subchapter by submitting an application together with a plan for providing water supply and sewer services to an economically distressed area for which the financial assistance is to be used.

(b) The application and plan must include:

(1) the name of the political subdivision and its principal officers;

(2) a citation of the law under which the political subdivision was created and operates;

(3) a project plan, prepared and certified by an engineer registered to practice in this state, that must:

(A) describe the proposed planning, design, and construction activities necessary to provide water supply and sewer services that meet minimum state standards provided by board rules; and

(B) identify the households to which the water supply and sewer services will be provided;

(4) a budget that estimates the total cost of providing water supply and sewer services to the economically distressed area and a proposed schedule and method for repayment of financial assistance consistent with board rules and guidelines;

(5) a description of the existing water supply and sewer facilities located in the area to be served by the proposed project, including a statement prepared and certified by an engineer registered to practice in this state that the facilities do not meet minimum state standards;

(6) documentation that the appropriate political subdivision has adopted and enforces the model rules developed under Section 16.343;

(7) information identifying the median household income for the area to be served by the proposed project;

(8) the total amount of assistance requested from the economically distressed areas account; and

(9) the water conservation plan required by Section 16.4021.

Without reference to the amendment of this subsection, this subsection was repealed by Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(11), eff. September 1, 2019.

(c) Before the board approves the application or provides any funds under an application, it shall require an applicant to adopt a program of water conservation for the more effective use of water that meets the criteria established under Section 17.125 for water supply projects or under Section 17.277 for water quality enhancement projects.

(d) Before considering an application, the board may require the applicant to:

(1) provide documentation to the executive administrator

sufficient to allow review of the applicant's managerial, financial, and technical capabilities to operate the system for which assistance is being requested;

(2) provide a written determination by the commission on the applicant's managerial, financial, and technical capabilities to operate the system for which assistance is being requested;

(3) request that the comptroller perform a financial management review of the applicant and, if the review is performed, provide the board with the results of the review; or

(4) provide any other information required by the board or the executive administrator.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.21. Renumbered from Sec. 17.887 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(36), eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(79), eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 16.01, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 404, Sec. 39, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 720, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 7, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 15, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 886 (H.B. 3339), Sec. 16(11), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1222 (S.B. 2452), Sec. 3, eff. November 5, 2019.

Sec. 17.9275. PRIORITIZATION OF PROJECTS BY BOARD. (a) The board shall prioritize projects for the purpose of providing financial assistance under this subchapter.

(b) The board shall establish a system for prioritizing projects for which financial assistance is sought from the board. The system must include a standard for the board to apply in determining whether a project qualifies for financial assistance at the time the application for financial assistance is filed with the board.

(c) The board shall give the highest consideration to projects

that will have a substantial effect, including projects:

(1) that will serve an area for which the board or the Department of State Health Services has determined that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems; or

(2) for which the applicant:

(A) is subject to an enforcement action, including a final order, judgment, or consent decree, by the commission, the state, or the United States Environmental Protection Agency, related to public health and safety issues resulting from water supply or sewer services; and

(B) did not cause or allow the violations that are the subject of the enforcement action.

(d) The board by rule may provide for the consideration of additional criteria.

Added by Acts 2019, 86th Leg., R.S., Ch. 1222 (S.B. 2452), Sec. 4, eff. November 5, 2019.

Sec. 17.928. FINDINGS REGARDING PERMITS. (a) The board shall not release funds for the construction of that portion of a project that proposes surface water or groundwater development until the executive administrator makes a written finding:

(1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water that the water supply project will provide; or

(2) that an applicant proposing groundwater development has the right to use water that the water supply project will provide.

(b) The board may release funds for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs before making the finding required under Subsection (a) if the executive administrator determines that a reasonable expectation exists that the finding will be made before the release of funds for construction.

(c) If an applicant includes a proposal for treatment works the board may not deliver funds for the treatment works until the applicant has received:

(1) a permit for construction and operation of the treatment works from the commission or other applicable permitting

authority unless such a permit is not required; and

(2) approval of the plans and specifications from the commission, the executive administrator, or other applicable authority.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.21. Renumbered from Sec. 17.888 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(36), eff. Sept. 6, 1990. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 33, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1222 (S.B. 2452), Sec. 5, eff. November 5, 2019.

Sec. 17.929. CONSIDERATIONS IN PASSING ON APPLICATION. (a) In passing on an application for financial assistance, the board shall consider:

(1) the need of the economically distressed area to be served by the water supply and sewer services in relation to the need of other political subdivisions requiring financial assistance under this subchapter and the relative costs and benefits of all applications;

(2) the availability to the area to be served by the project of revenue or financial assistance from alternative sources for the payment of the cost of the proposed project;

(3) the financing of the proposed water supply and sewer project including consideration of:

(A) the budget and repayment schedule submitted under Section 17.927(b)(4);

(B) other items included in the application relating to financing; and

(C) other financial information and data available to the board;

(4) whether the county and other appropriate political subdivisions have adopted model rules pursuant to Section 16.343 and the manner of enforcement of model rules;

(5) the feasibility of achieving cost savings by providing a regional facility for water supply or wastewater service and the feasibility of financing the facility by using funds from the economically distressed areas account or any other financial

assistance; and

(6) the ability of the applicant to repay the financial assistance.

(b) At the time an application for financial assistance is considered, the board also must find that the area to be served by a proposed project has a median household income that is not greater than 75 percent of the median state household income for the most recent year for which statistics are available.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.21. Renumbered from Sec. 17.889 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(36), eff. Sept. 6, 1990. Amended by Acts 1993, 73rd Leg., ch. 844, Sec. 7, eff. Aug. 30, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 8, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 1222 (S.B. 2452), Sec. 6, eff. November 5, 2019.

Sec. 17.930. APPROVAL OR DISAPPROVAL OF APPLICATION. (a) The board may issue a decision to approve an application contingent on changes being made to the plan submitted with the application.

(b) After making the considerations provided by Section 17.929, the board by resolution shall:

(1) approve the plan and application as submitted;

(2) approve the plan and application subject to the requirements identified by the board or commission for the applicant to obtain the managerial, financial, and technical capabilities to operate the system and any other requirements, including training under Subchapter M, the board considers appropriate;

(3) deny the application and identify the requirements or remedial steps the applicant must complete before the applicant may be reconsidered for financial assistance;

(4) if the board finds that the applicant will be unable to obtain the managerial, financial, or technical capabilities to build and operate a system, deny the application and issue a determination that a service provider other than the applicant is necessary or appropriate to undertake the proposed project; or

(5) deny the application.

(c) The board shall notify the applicant in writing of its decision.

(d) The board may require the applicant to provide local funds in an amount approved by the board under this subchapter, and the board shall provide the remaining funds from the economically distressed areas account.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.21. Renumbered from Sec. 17.890 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(36), eff. Sept. 6, 1990. Amended by Acts 1993, 73rd Leg., ch. 844, Sec. 8, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 404, Sec. 40, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 720, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 9, eff. September 1, 2005.

Sec. 17.931. APPLICATION AMENDMENT. (a) A political subdivision may request the executive administrator in writing to approve a change to or a modification of the budget or project plan included in its application if the change or modification does not increase the budget or change the project scope.

(b) A change or modification requested under Subsection (a) may not be implemented unless the executive administrator provides written approval.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.21. Renumbered from Sec. 17.891 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(36), eff. Sept. 6, 1990.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1222 (S.B. 2452), Sec. 7, eff. November 5, 2019.

Sec. 17.932. METHOD OF FINANCIAL ASSISTANCE. (a) The board may provide financial assistance to political subdivisions by using money in the economically distressed areas account to purchase political subdivision bonds.

(b) The board may make financial assistance available to political subdivisions in any other manner that it considers

feasible, including:

(1) contracts or agreements with a political subdivision for acceptance of financial assistance that establish any repayment based on the political subdivision's ability to repay the assistance and that establish requirements for acceptance of the assistance; or

(2) contracts or agreements for providing financial assistance in any federal or federally assisted project or program.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.21. Renumbered from Sec. 17.892 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(36), eff. Sept. 6, 1990.

Sec. 17.933. TERMS OF FINANCIAL ASSISTANCE. (a) The board may use money in the economically distressed areas account to provide financial assistance to a political subdivision in the form of a loan, a loan with zero interest, a grant, or other type of financial assistance to be determined by the board taking into consideration the information provided by Section 17.927(b)(7) and the political subdivision's ability to repay the financial assistance.

(b) In providing financial assistance to an applicant under this subchapter, the board may not provide to the applicant financial assistance for which repayment is not required in an amount that exceeds 50 percent of the total amount of the financial assistance, unless the board or the Department of State Health Services determines that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project. The board may provide the repayable portion of financial assistance from any financial assistance program for which the applicant is eligible. The applicant shall provide to the board or the Department of State Health Services information necessary to make a determination, and the board and the Department of State Health Services may enter into necessary memoranda of understanding to carry out this subsection.

(b-1) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1222 (S.B. 2452), Sec. 10, eff. November 5, 2019.

(c) The total amount of financial assistance provided by the board to political subdivisions under this subchapter from state-issued bonds for which repayment is not required may not exceed at any time 70 percent of the total principal amount of issued and

unissued bonds authorized under Article III of the Texas Constitution, for purposes of this subchapter plus outstanding interest on those bonds.

(d) In determining the amount and form of financial assistance and the amount and form of repayment, if any, the board shall establish repayment based on the political subdivision's ability to repay the financial assistance and shall consider:

(1) rates, fees, and charges that the average customer to be served by the project will be able to pay;

(2) sources of funding available to the political subdivision from federal and private funds and from other state funds;

(3) any local funds of the political subdivision to be served by the project if the economically distressed area to be served by the board's financial assistance is within the boundary of the political subdivision;

(4) the just, fair, and reasonable charges for water and wastewater service as provided in this code; and

(5) the ability of the board to maximize the portion of financial assistance for which repayment is required based on the political subdivision's ability to repay the assistance, as provided by board rule.

(e) In making its determination under Subsection (d)(1) of this section, the board may consider any study, survey, data, criteria, or standard developed or prepared by any federal, state, or local agency, private foundation, banking or financial institution, or other reliable source of statistical or financial data or information.

(f) The board may provide financial assistance money under this subchapter for treatment works as defined by Section 17.001 of this code only if the board determines that it is not feasible in the area covered by the application to use septic tanks as the method for providing sewer services under the applicant's plan.

(g) Repealed by Acts 2005, 79th Leg., Ch. 927, Sec. 15, eff. September 1, 2005.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 2.21. Renumbered from Sec. 17.893 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(36), eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 422, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 844, Sec. 9, eff.

Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.291, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 979, Sec. 21, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 404, Sec. 41, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 74, Sec. 1, eff. May 16, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 10, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 15, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 1222 (S.B. 2452), Sec. 8, eff. November 5, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1222 (S.B. 2452), Sec. 10, eff. November 5, 2019.

Sec. 17.934. SEWER CONNECTIONS. (a) Notwithstanding any other law, a political subdivision that is located in a county in which a political subdivision has received financial assistance under this subchapter or under Subchapter F, Chapter 15, of this code may:

(1) provide for a sanitary sewer system; and

(2) require property owners to connect to the sewer system.

(b) The board may require, as a condition for granting an application for financial assistance under this subchapter to a political subdivision for construction of sewer services, that the applicant exercise its authority under this section.

Added by Acts 1991, 72nd Leg., ch. 422, Sec. 1, eff. Sept. 1, 1991.

Sec. 17.935. GRANT STANDARDS. The Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes) does not apply to financial assistance provided under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 422, Sec. 3, eff. Sept. 1, 1991.

Sec. 17.936. RECOVERY OF ECONOMICALLY DISTRESSED AREA IMPACT FEES. (a) It is the intent of the legislature that a private developer not unduly benefit from the expenditure by the state of public funds on infrastructure for public benefit.

(b) In this section:

(1) "Capital improvement costs" includes:

(A) the construction contract price;

(B) surveying and engineering fees;

(C) land acquisition costs, including land purchases, court awards and costs, attorney's fees, and expert witness fees;

(D) fees actually paid or contracted to be paid to an independent, qualified engineer or financial consultant who is:

(i) preparing or updating the capital improvements plan; and

(ii) not an employee of the subdivision; and

(E) projected interest charges and other finance costs that are used for the payment of principal and interest on bonds, notes, or other obligations issued by or on behalf of the political subdivision to finance the capital improvements plan and that are not used to reimburse bond funds expended for facilities that are not identified in the capital improvements plan of the subdivision.

(2) "Economically distressed areas program impact fees" means the pro rata share of the capital improvement costs attributable to each lot in an economically distressed area.

(c) This section applies only to property located in:

(1) the unincorporated area of an affected county, as defined by Section 16.341; and

(2) an economically distressed area, as defined by Section 16.341.

(d) The provider of water or wastewater utility service to an economically distressed area may recover from a developer or owner of an undeveloped lot economically distressed areas program impact fees as provided by rules adopted by the board.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 22, eff. June 16, 1995.

Sec. 17.937. REPORTING AND TRANSPARENCY REQUIREMENTS. (a) Annually, the board shall post on the board's Internet website a report detailing each project for which the board has provided financial assistance under this subchapter.

(b) The report must include:

(1) a description of each project;

(2) the location of each project;

(3) the number of residents served by each project;

(4) the amount of financial assistance provided or anticipated to be provided for each project;

(5) a statement of whether each project has been completed and, if not, the expected completion date;

(6) the date on which each appropriate political subdivision adopted the model rules developed under Section 16.343; and

(7) the date on which each appropriate political subdivision certified that it enforces the applicable model rules developed under Section 16.343 or a description of measures taken to mitigate any deficiencies in compliance.

Added by Acts 2019, 86th Leg., R.S., Ch. 1222 (S.B. 2452), Sec. 9, eff. November 5, 2019.

SUBCHAPTER L. WATER FINANCIAL ASSISTANCE BOND PROGRAM

Sec. 17.951. DEFINITIONS. In this subchapter:

(1) "Fund" means the Texas Water Development Fund II.

(2) "Resolution" means any resolution or order approved by the board authorizing the issuance of water financial assistance bonds.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.952. ISSUANCE OF WATER FINANCIAL ASSISTANCE BONDS. The board by resolution may provide for the issuance of water financial assistance bonds, which shall be general obligation bonds of the state, in an aggregate principal amount not to exceed the principal amount authorized to be issued by the Texas Constitution.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.
Amended by:

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 11, eff. September 1, 2005.

Sec. 17.953. CONDITIONS FOR ISSUANCE OF WATER FINANCIAL ASSISTANCE BONDS. (a) Water financial assistance bonds may be

issued as various series and issues.

(b) Water financial assistance bonds may mature, serially or otherwise, not later than 50 years after the date on which they are issued.

(c) Water financial assistance bonds may be issued as bonds, notes, or other obligations as permitted by law and may be in the form and denominations and be issued in the manner and under the terms, conditions, and details as provided by resolution.

(d) Water financial assistance bonds may be sold at public or private sale at a price or prices and on terms determined by the board.

(e) Water financial assistance bonds shall be signed and executed as provided by resolution.

(f) Water financial assistance bonds may bear no interest or bear interest at a rate or rates determined in accordance with law.

(g) Rates of interest on water financial assistance bonds may be fixed, variable, floating, adjustable, or otherwise, as determined by the board or determined pursuant to any contractual arrangements approved by the board. The resolution may provide for the payment of interest at any time or the periodic determination of interest rates or interest rate periods.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.954. BOND ENHANCEMENT AGREEMENTS; PAYMENT OF EXPENSES. (a) The board at any time and from time to time may 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 water financial assistance bonds, in whole or in part, on the interest rate, currency, cash flow, or other basis desired by the board. 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.

(b) The fees and expenses of the board in connection with the issuance of water financial assistance bonds and the providing of financial assistance to political subdivisions may be paid from money in the 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 water financial assistance bonds

constitute payments of principal of and interest on the water financial assistance bonds.

(c) 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; agreements, including options, puts, or calls, to hedge payment, currency, rate, spread, or other exposure; or other agreements that further enhance the marketability, security, or creditworthiness of water financial assistance bonds.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.955. PERSONS DESIGNATED TO ACT AS AGENTS OF BOARD. (a) In the resolution the board may delegate authority to one or more officers, employees, or agents designated by the board to act on behalf of the board during the time any series of water financial assistance bonds are outstanding to:

(1) fix dates, prices, interest rates, amortization schedules, redemption features, and interest payment periods;

(2) perform duties and obligations of the board under a bond enhancement agreement; and

(3) perform other procedures specified in the resolution.

(b) The person designated by the board may adjust the interest on water financial assistance bonds and perform all duties described in a bond enhancement agreement as necessary to permit the water financial assistance bonds to be sold or resold at par in conjunction with secondary market transactions.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.956. TEXAS WATER DEVELOPMENT FUND II. The fund is a special fund in the state treasury, and all water financial assistance bond proceeds shall be deposited in the state treasury to the credit of the fund. The fund shall contain a "state participation account," an "economically distressed areas program account," and a "financial assistance account," and proceeds from the

sale of water financial assistance bonds issued for the purpose of providing financial assistance to political subdivisions shall be credited to such accounts as provided by resolution by the board. By resolution, the board may create additional accounts within the fund as the board determines are necessary or convenient for the administration of the fund.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.957. STATE PARTICIPATION ACCOUNT. (a) The Texas Water Development Fund II state participation account, referred to as the "state participation account," is an account established within the fund in the state treasury. Transfers shall be made from this account as provided by this subchapter.

(b) The state participation account is composed of:

(1) money and assets attributable to water financial assistance bonds designated by the board as issued for projects described in Sections 16.131 and 16.146;

(2) money from the sale, transfer, or lease of a project described in Subdivision (1) that was acquired, constructed, reconstructed, developed, or enlarged with money from the state participation account;

(3) payments received under a bond enhancement agreement with respect to water financial assistance bonds designated by the board as issued for projects described in Sections 16.131 and 16.146;

(4) investment income earned on money on deposit in the state participation account;

(5) money disbursed to the fund from the state water implementation fund for Texas as authorized by Section 15.434; and

(6) any other funds, regardless of their source, that the board directs be deposited to the credit of the state participation account.

(c) Money on deposit in the state participation account may be used by the board for projects described in Sections 16.131 and 16.146 in the manner that the board determines necessary for the administration of the fund.

(c-1) The comptroller shall establish a subaccount in the state participation account to be known as the state participation account II. The board may credit to the subaccount money in the state

participation account allocated by the board for the purposes of Section 16.146. The board may transfer money from the subaccount to the state participation account if the board determines the money is needed for the purposes of Section 16.131.

(d) The board shall transfer back to the state water implementation fund for Texas any money disbursed to the fund as described by Subsection (b)(5) of this section if the requirements of Section 15.435 are satisfied.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.16, eff. November 5, 2013.

Acts 2019, 86th Leg., R.S., Ch. 752 (H.B. 1052), Sec. 6, eff. September 1, 2019.

Sec. 17.958. ECONOMICALLY DISTRESSED AREAS PROGRAM ACCOUNT. (a) The Texas Water Development Fund II economically distressed areas program account, referred to as the "economically distressed areas program account," is an account established within the fund in the state treasury. Transfers shall be made from this account as provided by this subchapter.

(b) The economically distressed areas program account is composed of:

(1) money and assets attributable to water financial assistance bonds designated by the board as issued for projects described in Subchapter K;

(2) money provided by the federal government, the state, political subdivisions, and private entities for the purpose of paying debt service on water financial assistance bonds issued for purposes provided by Subchapter K;

(3) payments received under a bond enhancement agreement with respect to water financial assistance bonds designated by the board as issued for purposes provided by Subchapter K;

(4) investment income earned on money on deposit in the economically distressed areas program account; and

(5) any other funds, regardless of their source, that the board directs be deposited to the credit of the economically distressed areas program account.

(c) Money on deposit in the economically distressed areas program account may be used by the board for purposes provided by Subchapter K in the manner that the board determines necessary for the administration of the fund.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.959. FINANCIAL ASSISTANCE ACCOUNT. (a) The Texas Water Development Fund II water financial assistance account, referred to as the "financial assistance account," is an account established within the fund in the state treasury. Transfers shall be made from this account as provided by this subchapter.

(b) The financial assistance account is composed of:

(1) money and assets attributable to water financial assistance bonds designated by the board as issued for purposes described in Section 49-d-8, Article III, Texas Constitution, other than for purposes described in Sections 17.957 and 17.958;

(2) payments received under a bond enhancement agreement with respect to water financial assistance bonds designated by the board as issued for purposes described in Section 49-d-8, Article III, Texas Constitution, other than for purposes described in Sections 17.957 and 17.958;

(3) investment income earned on money on deposit in the financial assistance account; and

(4) any other funds, regardless of their source, that the board directs be deposited to the credit of the financial assistance account.

(c) Money on deposit in the financial assistance account may be used by the board for any one or more of the purposes described in Section 49-d-8, Article III, Texas Constitution, other than for purposes described in Sections 17.957 and 17.958, in the manner that the board determines necessary for the administration of the fund.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.960. BOND RESOLUTIONS. (a) In the resolution, the board may make additional covenants with respect to water financial assistance bonds and may provide for:

(1) the flow of funds;

(2) the establishment of accounts and subaccounts within the fund that the board determines are necessary for the administration of the fund;

(3) at the discretion of the board, the payment of fees and expenses of the board in connection with providing financial assistance to political subdivisions as the board determines are necessary for the administration of the fund;

(4) the maintenance, investment, and management of money within the fund and any accounts established by resolution by the board; and

(5) any other provisions and covenants that the board determines are necessary for the administration of the fund.

(b) The board may invest and reinvest money in the fund and any account therein in any obligations or securities as provided by the resolution or by rule adopted by the board.

(c) The board may adopt and have executed other proceedings, agreements, or trust agreements or instruments necessary in the issuance of water financial assistance bonds, including, without limitation, bond enhancement agreements.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.961. TRANSFERS TO REVOLVING FUNDS. (a) In order to implement and administer a revolving loan program established under Title VI of the Federal Water Pollution Control Act (33 U.S.C. Section 1381 et seq.), the board may direct the comptroller to transfer amounts from the financial assistance account to the state water pollution control revolving fund created by Section 15.601 to provide financial assistance pursuant to this subchapter.

(b) In order to implement and administer a revolving loan program established by any other federal legislation, including, without limitation, Title XIV of the federal Public Health Service Act, or any federal agency program under which an additional state revolving fund, as defined in Section 15.602, has been established, the board may direct the comptroller to transfer amounts from the financial assistance account to such additional state revolving fund to provide financial assistance pursuant to this subchapter.

(c) The board shall use the state water pollution control revolving fund in accordance with Section 15.604(a)(4) and Section

603(d)(4), Federal Water Pollution Control Act (33 U.S.C. Section 1383), as a source of revenue to be deposited in accordance with this subchapter for the payment of principal and interest on water financial assistance bonds issued by the board, the proceeds of which are deposited into the state water pollution control revolving fund, and to make payments under a bond enhancement agreement with respect to principal or interest on the water financial assistance bonds.

(d) In the event amounts are transferred to any additional state revolving fund, as defined in Section 15.602, pursuant to Subsection (b), the board shall, to the extent permitted by the federal legislation or federal agency program under which such additional state revolving fund was established, use the additional state revolving fund as a source of revenue to be deposited in accordance with this subchapter for the payment of principal and interest on water financial assistance bonds issued by the board, the proceeds of which are deposited into the additional state revolving fund, and to make payments under a bond enhancement agreement with respect to principal or interest on the water financial assistance bonds.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.9615. TRANSFERS TO RURAL WATER ASSISTANCE FUND. (a) The board may direct the comptroller to transfer amounts from the financial assistance account to the rural water assistance fund to provide financial assistance under this subchapter for the purposes provided in Section 15.994.

(b) The board shall use the rural water assistance fund as a source of revenue to be deposited in accordance with this subchapter for the payment of principal and interest on water financial assistance bonds issued by the board, the proceeds of which are to be deposited into the rural water assistance fund and to be used to make payments under a bond enhancement agreement with respect to principal or interest on the water financial assistance bonds.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.22, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1275, Sec. 3(47), eff. Sept. 1, 2003.

Sec. 17.9616. TRANSFER TO WATER INFRASTRUCTURE FUND. (a) The board may direct the comptroller to transfer amounts from the financial assistance account to the water infrastructure fund to provide financial assistance under this subchapter for the purposes provided in Section 15.974.

(b) The board shall use the water infrastructure fund as a source of revenue to be deposited in accordance with this subchapter for the payment of principal and interest on water financial assistance bonds issued by the board, the proceeds of which are to be deposited into the water infrastructure fund and to be used to make payments under a bond enhancement agreement with respect to principal or interest on the water financial assistance bonds.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 4.23, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1275, Sec. 3(48), eff. Sept. 1, 2003.

Sec. 17.9617. TRANSFERS TO STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS. (a) The board may direct the comptroller to transfer money or other assets from an account in the fund, including from the financial assistance account or from the state participation account, to the state water implementation revenue fund for Texas to provide financial assistance under this subchapter and Subchapter H, Chapter 15.

(b) A transfer of money or other assets from an account in the fund may not cause general obligation bonds that are payable from the fund or from an account in the fund to no longer be self-supporting for purposes of Section 49-j(b), Article III, Texas Constitution, as determined by the board.

(c) The board shall use the state water implementation revenue fund for Texas, or an account in that fund, as a source of revenue to be deposited in accordance with this subchapter for the payment of principal and interest on water financial assistance bonds issued by the board, the proceeds of which are to be deposited into the state water implementation revenue fund for Texas, or the account in that fund, and to be used to make payments under a bond enhancement agreement with respect to principal or interest on the water financial assistance bonds.

Added by Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.17, eff.

November 5, 2013.

Sec. 17.962. STATE APPROVALS. (a) Water financial assistance bonds may not be issued under this subchapter unless such issuance has been reviewed and approved by the bond review board.

(b) The proceedings relating to the water financial assistance bonds issued under this subchapter 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.

(c) After approval by the attorney general of the proceedings relating to water financial assistance bonds issued under this subchapter, registration of the proceedings by the comptroller, and delivery of the water financial assistance bonds to the purchasers, the water financial assistance bonds are incontestable and constitute general obligations of the state.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.413, eff. Sept. 1, 2001.

Sec. 17.963. PAYMENT OF BOARD OBLIGATIONS. (a) The board shall cooperate with the comptroller to develop procedures for the payment of principal and interest on water financial assistance bonds and any obligation under a bond enhancement agreement, as the same become due and owing.

(b) If there is not enough money in any account of the fund available to pay the principal and interest on water financial assistance bonds issued for such account, including money to make payments by the board under a bond enhancement agreement with respect to principal or interest on such water financial assistance bonds, the board shall notify the comptroller of such occurrence, and the comptroller shall transfer out of the first money coming into the state treasury not otherwise appropriated by the constitution the amount required to pay the obligations of the board that are due and owing. The comptroller shall make the transfers required by Section 49-d-8, Article III, Texas Constitution, and this subchapter in the manner specified in the resolution.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.964. ELIGIBLE SECURITY. Water financial assistance bonds are eligible to secure deposits of public funds of the state and political subdivisions of the state. Water financial assistance bonds are lawful and sufficient security for deposits to the extent of their face value.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.965. LEGAL INVESTMENTS. Water financial assistance bonds are legal and authorized investments for:

(1) banks;

(2) savings banks;

(3) trust companies;

(4) savings and loan associations;

(5) insurance companies;

(6) fiduciaries;

(7) trustees;

(8) guardians; and

(9) sinking funds and other public funds of the state and its agencies and of political subdivisions of the state.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.966. MUTILATED, LOST, OR DESTROYED BONDS. The board may provide for the replacement of mutilated, lost, or destroyed water financial assistance bonds.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.967. REFUNDING BONDS. (a) The board by resolution may provide for the issuance of water financial assistance bonds to refund outstanding bonds and water financial assistance bonds issued under this chapter and federal contractual obligations incurred under Section 49-d, Article III, Texas Constitution.

(b) The board may sell the refunding water financial assistance bonds and use the proceeds to retire any of the outstanding obligations described in Subsection (a), exchange the refunding water financial assistance bonds for the outstanding bonds or water

financial assistance bonds, or refund any of the outstanding obligations described in Subsection (a) in the manner provided by any other applicable statute, including Chapter 1207, Government Code.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.414, eff. Sept. 1, 2001.

Sec. 17.968. SALE OF POLITICAL SUBDIVISION BONDS BY THE BOARD; USE OF PROCEEDS. (a) The board may sell or dispose of political subdivision bonds or other assets purchased with money in the fund to any person, including the Texas Water Resources Finance Authority, or to another fund administered by the board, including the state water implementation revenue fund for Texas, and the board, in such manner as it shall determine, may apply the proceeds of the sale of political subdivision bonds or other assets held by the board to:

(1) pay debt service on water financial assistance bonds issued under this subchapter; or

(2) provide financial assistance to political subdivisions for any one or more of the purposes authorized by Section 49-d-8, Article III, Texas Constitution.

(a-1) A sale or disposition of political subdivision bonds or other assets may not cause general obligation bonds that are payable from the fund or from an account in the fund to no longer be self-supporting for purposes of Section 49-j(b), Article III, Texas Constitution, as determined by the board.

(b) The board shall sell the political subdivision bonds at the price and under the terms that it determines to be reasonable.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.18, eff. November 5, 2013.

Sec. 17.969. TAX EXEMPT BONDS. Since the board is performing an essential governmental function in the exercise of the powers conferred on it by this chapter, water financial assistance bonds issued under this subchapter and the interest and income from the water financial assistance bonds, including any profit made on the sale of water financial assistance bonds, and all fees, charges,

gifts, grants, revenues, receipts, and other money received or pledged to pay or secure the payment of water financial assistance 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 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.970. ENFORCEMENT BY MANDAMUS. Payment of water financial assistance bonds and obligations incurred under bond enhancement agreements and performance of official duties prescribed by Section 49-d-8, Article III, Texas Constitution, and this subchapter may be enforced in a court of competent jurisdiction by mandamus or other appropriate proceedings.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03.

Sec. 17.971. SUBCHAPTER CUMULATIVE OF OTHER LAWS. (a) This subchapter is cumulative of other laws on the subject, and the board may use provisions of other applicable laws in the issuance of water financial assistance bonds and the execution of bond enhancement agreements, but this subchapter is wholly sufficient authority for the issuance of water financial assistance bonds, the execution of bond enhancement agreements, and the performance of all other acts and procedures authorized by this subchapter.

(b) In addition to other authority granted by this subchapter, the board may exercise the authority granted to the governing body of an issuer with regard to the issuance of obligations under Chapter 1371, Government Code.

(c) In exercising the powers granted to the board under this subchapter, the board may exercise any powers granted to it under this chapter and Chapter 16 including the powers described in Subchapters D, E, F, G, and K, notwithstanding any provision in this chapter or Chapter 16 that may be inconsistent with or in conflict with the provisions of this subchapter as a result of the establishment of the fund as a fund separate and distinct from the existing Texas Water Development Fund, it being the intent of the legislature that the financial assistance made available to political subdivisions under this subchapter, in pursuance of the authority

granted by Section 49-d-8, Article III, Texas Constitution, be provided by the board in the manner the board deems necessary to achieve the purposes of Section 49-d-8, Article III, Texas Constitution, and notwithstanding any other existing provisions in this chapter or Chapter 16, the provisions of this chapter and Chapter 16 shall be inclusive of the provisions of this subchapter and Section 49-d-8, Article III, Texas Constitution.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.03. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.415, eff. Sept. 1, 2001.

SUBCHAPTER M. REQUIRED TRAINING FOR APPLICANTS FOR AND RECIPIENTS OF ECONOMICALLY DISTRESSED AREAS PROGRAM FINANCIAL ASSISTANCE

Sec. 17.991. DEFINITIONS. In this subchapter:

(1) "Operating entity" means the governing body of a political subdivision responsible for providing water supply and sewer services and the management of its water and sewer system, as defined by rules of the board.

(2) "Political subdivision" has the meaning assigned by Section 17.921.

Added by Acts 2001, 77th Leg., ch. 720, Sec. 1, eff. Sept. 1, 2001.

Sec. 17.992. TRAINING FOR APPLICANTS. The board may require the operating entity of a political subdivision that applies for financial assistance under Subchapter K to complete a training program approved by the board if the board determines that training is necessary.

Added by Acts 2001, 77th Leg., ch. 720, Sec. 1, eff. Sept. 1, 2001.

Sec. 17.993. TRAINING FOR OPERATING ENTITIES. (a) The commission or the board may evaluate whether an operating entity needs training if the operating entity:

(1) requests financial assistance or an amendment to the project plan or budget;

(2) requests more time to meet its obligations under a repayment schedule;

(3) does not provide required documentation; or

(4) has a history of compliance problems, as determined by the commission.

(b) The board or the commission may determine that training is necessary if, after an examination and evaluation of the operating entity's managerial, financial, and technical capabilities, the board or commission finds that the operating entity's managerial, financial, or technical capabilities are inadequate to ensure the project will meet program requirements or remain financially viable.

(c) The commission by rule shall establish a preenforcement threshold of noncompliance at which the commission may notify the board that an operating entity needs training.

(d) If the commission assesses a penalty against an operating entity in an enforcement action, the enforcement order must contain a provision requiring that the operating entity receive training as ordered by the board. The commission shall notify the board when the commission assesses a penalty against an operating entity.

Added by Acts 2001, 77th Leg., ch. 720, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 12, eff. September 1, 2005.

Sec. 17.994. TRAINING REQUIREMENTS. (a) The board by order shall require an operating entity to undergo appropriate training if the board:

(1) determines that training is necessary under Section 17.992 or 17.993(a) or (b); or

(2) receives notice from the commission that the commission finds that training is necessary under Section 17.993.

(b) The board shall refer the operating entity to an appropriate individual, association, business organization, or governmental entity for training required by the order.

(c) The person providing the training shall conduct an assessment of the operating entity for which training is ordered, determine who needs training, and devise a training program to address the deficiencies identified in the assessment.

(d) The person providing the training shall present a proposed training program to the board for approval. If the training program

is approved by the board, the person shall conduct the required training.

(e) On completion of the training, the person who provided the training shall issue a certificate of completion to the participants in the training and to the board.

(f) A political subdivision shall reimburse a participant in training for reasonable expenses incurred in completing the training.

(g) Not later than January 15 each year, each person who provides training under this section shall report to the board a list of political subdivisions for which the person provided training required under this section during the previous calendar year.

Added by Acts 2001, 77th Leg., ch. 720, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 18. MARINE SEAWATER DESALINATION PROJECTS

Sec. 18.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Marine seawater" means water that is derived from the Gulf of Mexico.

(3) "Project" means:

(A) a marine seawater desalination project; or

(B) a facility for the storage, conveyance, and delivery of desalinated marine seawater.

Added by Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 10, eff. June 17, 2015.

Sec. 18.002. RELATIONSHIP TO OTHER LAWS. (a) Except as provided by Subsection (b) or as otherwise provided by law:

(1) Chapter 11 applies to a permit or authorization under Section 18.003 or 18.004 in the same manner as that chapter applies to a permit or authorization under that chapter; and

(2) Chapter 26 applies to a permit under Section 18.005 in the same manner as that chapter applies to a permit under that chapter.

(b) In the event of a conflict between this chapter and Chapter 11 or 26, this chapter controls.

(c) This chapter is intended to provide an alternative

procedure for obtaining an authorization to divert and use state water that consists of marine seawater or to discharge treated marine seawater or waste resulting from the desalination of treated marine seawater under the circumstances provided by this chapter. This chapter does not affect the authority of a person to:

(1) divert and use state water that consists of marine seawater in accordance with the procedures provided by Chapter 11, including the authority to divert marine seawater from a point of diversion located in a bay or estuary; or

(2) discharge treated marine seawater or waste resulting from the desalination of treated marine seawater in accordance with the procedures provided by Chapter 26, including the authority to discharge waste resulting from the desalination of marine seawater into a bay or estuary.

Added by Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 10, eff. June 17, 2015.

Sec. 18.003. DIVERSIONS OF MARINE SEAWATER. (a) A person must obtain a permit to divert and use state water that consists of marine seawater if:

(1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or

(2) the seawater contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter.

(b) A person may divert and use state water that consists of marine seawater without obtaining a permit if Subsection (a) does not apply.

(c) A person who diverts and uses state water that consists of marine seawater under a permit required by Subsection (a) or as authorized by Subsection (b) must determine the total dissolved solids concentration of the seawater at the water source by monthly sampling and analysis and provide the data collected to the commission. A person may not begin construction of a facility for the diversion of marine seawater without obtaining a permit until the person has provided data to the commission based on the analysis of samples taken at the water source over a period of at least one year demonstrating that Subsection (a)(2) does not apply. A person who

has begun construction of a facility for the diversion of marine seawater without obtaining a permit because the person has demonstrated that Subsection (a)(2) does not apply is not required to obtain a permit for the facility if the total dissolved solids concentration of the seawater at the water source subsequently changes so that Subsection (a)(2) applies.

(d) A person may use marine seawater diverted under a permit required by Subsection (a) or as authorized by Subsection (b) for any beneficial purpose, but only if the seawater is treated in accordance with rules adopted by the commission before it is used. Rules adopted under this subsection may impose different treatment requirements based on the purpose for which the seawater is to be used.

(e) The commission shall adopt rules providing an expedited procedure for acting on an application for a permit required by Subsection (a). The rules must provide for notice, an opportunity for the submission of written comment, and an opportunity for a contested case hearing regarding commission actions relating to an application for a permit.

(f) A person may not divert marine seawater under a permit required by Subsection (a) or as authorized by Subsection (b) from a point of diversion located in a bay or estuary.

(g) An application for a permit required by Subsection (a) must address the points from which, and the rate at which, the facility the applicant proposes to construct will divert marine seawater.

(h) The commission by rule shall prescribe reasonable measures to minimize impingement and entrainment.

(i) The Parks and Wildlife Department and the General Land Office jointly shall conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater, taking into account the need to protect marine organisms. Not later than September 1, 2018, the Parks and Wildlife Department and the General Land Office shall submit a report on the results of the study to the commission. The report must include recommended diversion zones for designation by the commission and recommendations for the number of points from which, and the rate at which, a facility may divert marine seawater. Not later than September 1, 2020, the commission by rule shall designate appropriate diversion zones. A diversion zone may be contiguous to, be the same as, or overlap a discharge zone. The point or points from which a facility may divert

marine seawater must be located in a diversion zone designated by the commission under rules adopted under this subsection if:

(1) the facility is authorized by a permit as required by Subsection (a) issued after the rules are adopted; or

(2) the facility is exempt under Subsection (b) from the requirement of a permit and construction of the facility begins after the rules are adopted.

(j) Until the commission adopts rules under Subsection (i), a person must consult the Parks and Wildlife Department and the General Land Office regarding the point or points from which a facility the person proposes to construct may divert marine seawater before submitting an application for a permit for the facility if Subsection (a) applies or before beginning construction of the facility if Subsection (b) applies.

Added by Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 10, eff. June 17, 2015.

Sec. 18.004. BED AND BANKS AUTHORIZATION. (a) With prior authorization granted under rules prescribed by the commission, a person may use the bed and banks of any flowing natural stream in this state or a lake, reservoir, or other impoundment in this state to convey marine seawater that has been treated so as to meet standards that are at least as stringent as the water quality standards applicable to the receiving stream or impoundment adopted by the commission.

(b) The commission shall provide for notice and an opportunity for the submission of written comment but may not provide an opportunity for a contested case hearing regarding commission actions relating to an application for an authorization under this section to use the bed and banks of a flowing natural stream to convey treated marine seawater. The commission shall provide for notice, an opportunity for the submission of written comment, and an opportunity for a contested case hearing regarding commission actions relating to an application for an authorization under this section to use a lake, reservoir, or other impoundment to convey treated marine seawater.

(c) A person may not discharge treated marine seawater into a flowing natural stream in this state or a lake, reservoir, or other impoundment in this state for the purpose of conveyance of the water

under an authorization granted under this section unless the person holds a permit issued under Section 18.005 authorizing the discharge.

(d) Treated marine seawater that is conveyed under an authorization granted under this section may be used only by the person to whom the authorization is granted.

(e) Section 11.042(c) applies to an authorization granted under this section in the same manner as that subsection applies to an authorization granted under Section 11.042.

(f) This section does not prohibit a person from conveying treated marine seawater in any other manner authorized by law.

Added by Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 10, eff. June 17, 2015.

Sec. 18.005. DISCHARGE OF TREATED MARINE SEAWATER OR WASTE RESULTING FROM DESALINATION OF MARINE SEAWATER. (a) In this section, "permit," "person," "to discharge," "waste," and "water" have the meanings assigned by Section 26.001.

(b) Section 26.011 applies to discharges governed by this section in the same manner as that section applies to discharges governed by Chapter 26.

(c) A person must obtain a permit to discharge:

(1) treated marine seawater into a natural stream in this state or a lake, reservoir, or other impoundment in this state; or

(2) waste resulting from the desalination of treated marine seawater into the Gulf of Mexico.

(d) A person shall:

(1) treat marine seawater so as to meet standards that are at least as stringent as the water quality standards adopted by the commission applicable to the receiving stream or impoundment before discharging the seawater under this section; and

(2) comply with all applicable state and federal requirements when discharging waste resulting from the desalination of marine seawater into the Gulf of Mexico.

(e) The commission by rule shall provide an expedited procedure for acting on an application for a permit under this section. The rules must provide for:

(1) notice, an opportunity for the submission of written comment, and an opportunity to request a public meeting and may

authorize a contested case hearing regarding commission actions relating to an application for a permit described by Subsection (c)(1);

(2) notice, an opportunity for the submission of written comment, an opportunity to request a public meeting, and an opportunity for a contested case hearing regarding commission actions relating to an application for a permit described by Subsection (c)(2) if the point of discharge is located within three miles of any point located on the coast of this state; and

(3) notice and an opportunity for the submission of written comment regarding commission actions relating to an application for a permit described by Subsection (c)(2) if Subdivision (2) of this subsection does not apply.

(f) A person may not discharge waste resulting from the desalination of marine seawater into a bay or estuary under a permit issued under Subsection (c)(2).

(g) The Parks and Wildlife Department and the General Land Office jointly shall conduct a study to identify zones in the Gulf of Mexico that are appropriate for the discharge of waste resulting from the desalination of marine seawater, taking into account the need to protect marine organisms. Not later than September 1, 2018, the Parks and Wildlife Department and the General Land Office shall submit a report on the results of the study to the commission. The report must include recommended discharge zones for designation by the commission. Not later than September 1, 2020, the commission by rule shall designate appropriate discharge zones. The point at which a facility may discharge waste resulting from the desalination of marine seawater must be located in a discharge zone designated by the commission under rules adopted under this subsection if the facility is authorized by a permit issued under Subsection (c)(2) after the rules are adopted.

(h) Until the commission adopts rules under Subsection (g), a person must consult the Parks and Wildlife Department and the General Land Office regarding the point at which the facility the person proposes to construct may discharge waste resulting from the desalination of marine seawater before submitting an application for a permit under Subsection (c)(2) for the facility.

Added by Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 10, eff. June 17, 2015.

CHAPTER 20. TEXAS WATER RESOURCES FINANCE AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 20.001. LEGISLATIVE PURPOSE AND POLICY. (a) The legislature declares that it is the policy of the state to:

(1) encourage and assist in the conservation and development of the water resources of the state for all useful and lawful purposes by the acquisition, improvement, extension, or construction of water resource conservation and development projects;

(2) encourage the optimum development of the feasible sites available for the construction or enlargement of dams and reservoirs for conservation of the public water of the state held in trust for the use and benefit of the public through assistance and participation in the acquisition and development of water storage facilities and systems or works necessary for filtration, treatment, and transportation of water from storage to points of treatment, filtration, and distribution;

(3) aid in the protection of the quality of the water resources of the state by encouraging and assisting in the financing of water quality enhancement projects; and

(4) aid in flood control, drainage, subsidence control, recharge, chloride control, agricultural soil and water conservation, and desalinization by encouraging and assisting in the financing of projects necessary to those purposes.

(b) The legislature finds that existing mechanisms for implementing the policies stated in Subsection (a) of this section may be enhanced by financing as provided in this subchapter.

(c) The legislature finds that to enhance the ability of the state to aid in the accomplishment of the purposes stated in Subsection (a) of this section, it is necessary to create a water resources finance authority for the purpose of increasing the availability of financing by purchasing political subdivision bonds, and the legislature declares that the creation of the authority for this purpose is a public purpose and a use for which public money may be borrowed, spent, advanced, loaned, granted, or appropriated, and that this use serves a public purpose in improving or otherwise benefitting the people of this state. Also, the legislature determines and declares the necessity of enacting this subchapter is in the public interest.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.002. DEFINITIONS AND CONSTRUCTION. In this subchapter:

(1) "Authority" means the Texas Water Resources Finance Authority.

(2) "Authorized investments" means:

(A) direct obligations of or obligations the principal of and interest on which are guaranteed by the United States;

(B) direct obligations of or participation certificates guaranteed by the Federal Intermediate Credit Bank, Federal Land Banks, Federal National Mortgage Association, Federal Home Loan Banks, and Banks for Cooperatives;

(C) direct obligations of or obligations the principal of and interest on which are guaranteed by the State of Texas;

(D) bonds of cities, counties, and other political subdivisions of this state, other than bonds issued by a political subdivision to finance a project covered by this chapter;

(E) certificates of deposit of state and national banks that satisfy the requirements of Section 2.015, Chapter 240, Acts of the 69th Legislature, Regular Session, 1985 (Article 4393-1, Vernon's Texas Civil Statutes), and the rules of the comptroller and if the authority or a financial institution acting solely as agent for the authority possesses the collateral securing those deposits; and

(F) direct security repurchase agreements made only with state or national banks domiciled in the state under which the authority buys, holds in its possession or the possession of a financial institution acting solely as agent for the authority for a specified time, and then sells back any of the following securities, obligations, or participation certificates:

(i) United States government securities;

(ii) direct obligations of or obligations the principal of and interest on which are guaranteed by the United States; and

(iii) direct obligations of or participation certificates guaranteed by the Federal Intermediate Credit Bank, Federal Land Banks, Federal National Mortgage Association, Federal Home Loan Banks, and Banks for Cooperatives.

(3) "Board" means the board of directors of the authority.

(4) "Bond" means any type of interest-bearing obligation,

including any bond, note, bond anticipation note, or other evidence of indebtedness under this chapter.

(5) "Development board" means the Texas Water Development Board.

(6) "Director" means a member of the board.

(7) "Political subdivision" means a city, county, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, a state agency, an entity created by an interstate compact to which the state is a party, and any nonprofit water supply corporation created and operating under Chapter 67.

(8) "Political subdivision bonds" means bonds, notes, or other securities that were issued by and any debt or other contractual obligations that were incurred by a political subdivision for the purpose of financing or refinancing projects for water resource development and conservation, water quality enhancement, flood control, drainage, subsidence control, recharge, chloride control, agricultural soil and water conservation, desalinization, or any combination of these purposes.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987. Amended by Acts 1997, 75th Leg., ch. 891, Sec. 3.21, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.63, eff. Sept. 1, 1999.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 20.011. CREATION OF AUTHORITY. (a) The Texas Water Resources Finance Authority is created as a governmental entity and a body politic and corporate.

(b) The exercise of the powers and duties by the authority under this chapter constitutes an essential public purpose of the state in promoting the general welfare of the state and its citizens.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.012. BOARD OF DIRECTORS. (a) The authority is governed by a board of directors composed of the directors of the development board.

(b) Each director serves on the board as an additional duty to

those required of a member of the development board.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 626 (S.B. 1301), Sec. 1, eff. June 16, 2015.

Sec. 20.013. COMPENSATION; REIMBURSEMENT. The directors are not entitled to receive compensation for their service on the board but are entitled to be reimbursed for their expenses in performing their powers and duties under this chapter.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.014. ORGANIZATION OF BOARD. (a) The board shall select from its membership one person to serve as chairman and one person to serve as vice-chairman.

(b) The person selected as chairman shall preside at meetings of the board and perform other duties directed by the board, and the vice-chairman shall preside at meetings of the board in the absence of the chairman.

(c) The board shall select persons to serve as secretary and treasurer for the authority. The persons selected as secretary and treasurer are not required to be directors and the positions of secretary and treasurer may be held by one person. The board also may appoint assistant secretaries.

(d) The secretary is the custodian of the minutes, books, records, and seal of the board, and the secretary and the treasurer shall perform duties as directed by the board.

(e) The chairman, vice-chairman, secretary, and treasurer shall be selected by the board at the first meeting of the board following January 31 of each odd-numbered year.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.015. BOARD MEETINGS. (a) The board shall hold regular meetings at times provided by its rules and shall meet at least once each calendar year.

(b) The board may hold special meetings at the call of the chairman or on request of a majority of the directors.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 626 (S.B. 1301), Sec. 2, eff. June 16, 2015.

Sec. 20.016. RULES AND RESOLUTIONS. The board may adopt rules that are necessary to carry out this chapter and may take official action by adoption of a resolution or order.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.017. LIABILITY. A director or officer of the authority is not liable for any bonds issued or contracts executed by the authority.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.018. GENERAL FISCAL AUTHORITY. The board may acquire, hold, invest and reinvest in authorized investments, deposit, use, and dispose of the authority's revenues, income, receipts, funds, and money from every source and may select its depository or depositories, inside or outside the state, subject only to this chapter and any covenants with respect to the authority's bonds.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.019. PROPERTY TAX EXEMPT. (a) The property of the authority, its income, and its operations are exempt from all taxes and assessments imposed by the state and political subdivisions on property acquired or used by the authority under this chapter.
(b) If the authority is dissolved, all of its rights and properties vest in the state.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.020. FISCAL YEAR; ANNUAL AUDIT. (a) The authority shall operate on a fiscal year beginning September 1.

(b) The state auditor may audit the authority's books and accounts, based on a risk assessment performed by the state auditor and subject to the legislative audit committee's approval of including the audit in the audit plan under Section 321.013, Government Code. The cost of an audit shall be paid by the authority.

(c) A copy of the audit shall be filed with the governor and with both houses of the legislature on or before January 1 of each year, except if the audit is being made by the state auditor and is not available by January 1, it shall be filed as soon as it is available.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 50, eff. Sept. 1, 2003.

Sec. 20.021. AUTHORITY EXPENSES. (a) Expenses incurred by the authority under this Act shall be paid solely from revenues or funds provided or to be provided under this chapter.

(b) This chapter may not be construed to authorize the authority to incur any indebtedness or liability on behalf of or payable by the state.

(c) The authority may not accept and is not entitled to receive any money appropriated by the state.

(d) The board shall use all available sources of revenue and income to pay expenses of operation and maintenance of the authority, to pay the premium, principal of and interest on bonds, and to create and maintain any reserves or funds provided by resolutions authorizing the issuance of bonds.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.022. SUITS. The authority may sue and be sued in the courts of this state in the name of the authority, and the courts shall take judicial notice of the creation of the authority.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.023. SEAL. The board may adopt a seal for the authority.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 20.041. GENERAL POWERS AND DUTIES. The authority may exercise any authority necessary or appropriate to carry out the purposes of this chapter.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.042. GIFTS, GRANTS, ETC. The board may request and accept for the authority grants, allocations, subsidies, guaranties, aid, contributions, services, labor, materials, gifts, and donations.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.043. CONTRACTS. The board on behalf of the authority may enter into contracts with any person to carry out this chapter.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.044. PURCHASE OF INSURANCE. The board may purchase for the authority and pay premiums on insurance of any type, in any amounts, and from any insurers the board considers advisable.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.045. CONTRACTS WITH DEVELOPMENT BOARD. The authority may enter into contracts with the development board and with consultants as necessary to perform the functions provided by this chapter.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

SUBCHAPTER D. POLITICAL SUBDIVISION BONDS

Sec. 20.071. PURCHASE OF POLITICAL SUBDIVISION BONDS. The board may purchase political subdivision bonds including bonds that are acquired or owned by the development board.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.072. ACQUISITION OF CERTAIN DEVELOPMENT BOARD BONDS. If the board agrees to purchase political subdivision bonds from the development board that have not been purchased by the development board at the time of the agreement, the board may pay the purchase price for those bonds in exchange for the agreement of the development board to transfer those bonds to the board at the time the development board acquires them.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.073. PRICE AND TERMS OF PURCHASE. The board shall purchase political subdivision bonds at prices and under terms the board determines to be reasonable.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.074. REVENUE BONDS. (a) The board may issue revenue bonds in the name of the authority to finance the cost of acquisition of political subdivision bonds and to pay the cost of bond issuance.

(b) The board may provide for payment of the premium, principal of, and interest on revenue bonds by pledging all or part of the revenue derived from political subdivision bonds acquired or to be acquired by the authority or from other sources of funds available to the authority.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.075. CONTRACT FOR OBTAINING COMPLIANCE WITH POLITICAL SUBDIVISION BONDS. The board shall enter into a contract with the development board for the development board to perform the functions required to ensure that the political subdivisions pay the debt service on political subdivision bonds and observe the conditions and requirements set forth in those bonds.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.076. ENFORCEMENT OF POLITICAL SUBDIVISION BONDS. (a) If there is a default in the payment of principal of or interest on political subdivision bonds purchased by the authority or any other default as defined in the proceedings or indentures authorizing the issuance of the bonds, the attorney general shall institute appropriate proceedings for mandamus or other legal remedies to compel the political subdivision or its officers, agents, and employees to cure the default by performing those duties that they are legally obligated to perform.

(b) The proceedings shall be brought and venue shall be in a district court of Travis County.

(c) This section is cumulative of any other rights or remedies to which the board may be entitled.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

SUBCHAPTER E. BOND PROCEDURES

Sec. 20.101. 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 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.416, eff. Sept. 1, 2001.

Sec. 20.102. CONDITIONS FOR ISSUANCE OF BONDS. (a) Bonds may be issued as various series and issues.

(b) Bonds issued by the authority may mature serially or otherwise not later than 50 years after the date on which they are issued.

(c) The bonds may bear interest at a rate or rates determined in accordance with the resolution or order authorizing the issuance of the bonds but not to exceed the net effective interest rate authorized by Chapter 1204, Government Code.

(d) Rates of interest on bonds may be fixed, variable, floating, adjustable, or otherwise.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.417, eff. Sept. 1, 2001.

Sec. 20.103. PERIODIC DETERMINATION OF INTEREST. A bond resolution or order may provide for the periodic determination of interest rates without the board being required to give specific approval.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.104. PERSONS DESIGNATED TO ACT AS AGENTS OF BOARD. (a) A bond resolution or order may delegate to one or more officers, employees, or agents designated by the board authority to act on behalf of the board during the time bonds are outstanding to fix dates, prices, interest rates, and interest payment periods and to perform other procedures specified in the resolution.

(b) The person designated by the board may adjust the interest on bonds as necessary to permit the bonds to be sold or resold at par in conjunction with secondary market transactions.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.105. SECURITY QUALIFICATIONS. The board may take any action necessary to qualify the authority bonds for offer and sale under the securities laws and regulations of the United States, this state, and other states of the United States.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.106. 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 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.107. FORM OF BONDS. (a) The authority's 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 or order authorizing their issuance.

(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 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.108. FUNDS. (a) In the resolution or order authorizing 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.

(b) 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.

(c) Any funds established by the board are not to be part of the state treasury but, at the direction of the board, may be kept and held in escrow and in trust by the state treasury on behalf of the authority and the owners of the bonds and used only as provided by this chapter.

(d) Money in the funds shall be invested in authorized investments as provided by any bond resolutions and orders of the authority.

(e) Legal title to money in any fund is in the authority unless or until paid from the fund as provided by this chapter or the

resolutions or orders authorizing the authority's bonds.

(f) The comptroller, as custodian of any of the funds, shall administer the funds solely and strictly as provided by this chapter and the resolutions or orders authorizing the bonds, and the state may not take any other action relating to any of those funds except those specified in this chapter and the resolutions and orders authorizing the bonds.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 20.08, eff. Sept. 1, 1997.

Sec. 20.109. RESOLUTIONS, ORDERS, ETC. (a) The resolutions or orders authorizing the bonds may prohibit the further issuance of bonds or other obligations payable from the pledged revenue 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 orders or resolutions of the board issuing bonds may include other provisions and covenants that the board determines necessary.

(c) In a resolution or order authorizing the issuance of the authority's bonds, the board may prescribe systems, methods, routines, and procedures under which the authority will function.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.110. APPROVAL OF ATTORNEY GENERAL. The 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 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.418, eff. Sept. 1, 2001.

Sec. 20.111. BOND REVIEW BOARD. (a) Bonds may not be issued under this section unless the issuance has been reviewed and approved by the bond review board. The bond review board is composed of:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives; and

(4) the comptroller of public accounts.

(b) The governor is chairman of the review board. The bond review board may adopt rules governing application for review, the review process, and reporting requirements. A member of the bond review board may not be held liable for damages resulting from the performance of the members' functions under this section.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 20.09, eff. Sept. 1, 1997.

Sec. 20.112. 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 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.113. ELIGIBLE SECURITY. 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 face value.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.114. LEGAL INVESTMENTS. The bonds are legal and authorized investments for:

(1) banks;

(2) savings banks;

(3) trust companies;

(4) savings and loan associations;
(5) insurance companies;
(6) fiduciaries;
(7) trustees;
(8) guardians; and
(9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.115. TAX EXEMPT. Since the authority is performing an essential governmental function in the exercise of the powers conferred on it by this chapter, the bonds issued under this Act, 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 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.116. PLEDGE OF STATE FAITH AND CREDIT; COVENANT WITH OWNERS OF BONDS. (a) The authority's bonds are obligations solely of the authority and are payable solely from funds of the authority, and this chapter and the authority's bonds are not and do not create or constitute a pledge, giving, or lending of the faith or credit or taxing authority of the state.

(b) Each bond of the authority must include a statement that the state is not obligated to pay the premium, principal of, or interest on the authority's bonds and that the faith or credit and the taxing authority of the state is not pledged, given, or loaned to those payments.

(c) The state pledges to and agrees with the owners of any bonds issued in accordance with this chapter that the state will not limit or alter the rights vested in the authority to fulfill the terms of any 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 authority may include this pledge and agreement of the state in any agreement with the owners of bonds.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

Sec. 20.117. ENFORCEMENT BY MANDAMUS. A writ of mandamus and all other legal and equitable remedies are available to any party at interest to require the authority and any other party to carry out agreements and to perform functions and duties under this chapter, the Texas Constitution, or the authority's bond resolutions and orders.

Added by Acts 1987, 70th Leg., ch. 728, Sec. 1, eff. June 20, 1987.

SUBTITLE D. WATER QUALITY CONTROL
CHAPTER 26. WATER QUALITY CONTROL
SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

Sec. 26.001. DEFINITIONS. As used in this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(4) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(5) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(6) "Waste" means sewage, industrial waste, municipal

waste, recreational waste, agricultural waste, or other waste, as defined in this section.

(7) "Sewage" means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

(8) "Municipal waste" means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

(9) "Recreational waste" means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

(10) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated range land, pasture land, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

(11) "Industrial waste" means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.

(12) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste.

(13) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated rangeland, pastureland, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

(14) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) "Sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(16) "Treatment facility" means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

(17) "Disposal system" means any system for disposing of waste, including sewer systems and treatment facilities.

(18) "Local government" means an incorporated city, a county, a river authority, or a water district or authority acting

under Article III, Section 52, or Article XVI, Section 59 of the Texas Constitution.

(19) "Permit" means an order issued by the commission in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.

(20) "To discharge" includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(21) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

(22) "Identified state supplement to an NPDES permit" means any part of a permit on which the commission has entered a written designation to indicate that the commission has adopted that part solely in order to carry out the commission's duties under state statutes and not in pursuance of administration undertaken to carry out a permit program under approval by the Administrator of the United States Environmental Protection Agency.

(23) "NPDES" means the National Pollutant Discharge Elimination System under which the Administrator of the United States Environmental Protection Agency can delegate permitting authority to the State of Texas in accordance with Section 402(b) of the Federal Water Pollution Control Act.

(24) "Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement this chapter or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including:

(A) intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances;

(B) extensions, improvements, remodeling, additions, and alterations of the items in Paragraph (A) of this subdivision;

(C) elements essential to provide a reliable recycled supply such as standby treatment units and clear-well facilities;

(D) any works, including sites and acquisition of the

land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment;

(E) any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste; and

(F) facilities to provide for the collection, control, and disposal of waste heat.

(25) "Person" means an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.

(26) "Affected county" is a county to which Subchapter B, Chapter 232, Local Government Code, applies.

Amended by Acts 1977, 65th Leg., p. 1640, ch. 644, Sec. 1. Renumbered from Sec. 21.003 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 985, ch. 367, Sec. 43, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.064, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 19, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 642, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.068, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 979, Sec. 24, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 404, Sec. 43, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 12.01, eff. Sept. 1, 2001.

Sec. 26.002. OWNERSHIP OF UNDERGROUND WATER. Nothing in this chapter affects ownership rights in underground water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 26.003. POLICY OF THIS SUBCHAPTER. It is the policy of this state and the purpose of this subchapter to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state; to encourage

and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 965, Sec. 1.26, eff. Sept. 1, 2001.

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 26.011. IN GENERAL. Except as otherwise specifically provided, the commission shall administer the provisions of this chapter and shall establish the level of quality to be maintained in, and shall control the quality of, the water in this state as provided by this chapter. Waste discharges or impending waste discharges covered by the provisions of this chapter are subject to reasonable rules or orders adopted or issued by the commission in the public interest. The commission has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities. This chapter does not apply to discharges of oil covered under Chapter 40, Natural Resources Code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.065, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 10, Sec. 4, eff. March 28, 1991.

Sec. 26.012. STATE WATER QUALITY PLAN. The executive director shall prepare and develop a general, comprehensive plan for the control of water quality in the state which shall be used as a flexible guide by the commission when approved by the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.065, eff. Sept. 1, 1985.

Sec. 26.013. RESEARCH, INVESTIGATIONS. The executive director shall conduct or have conducted any research and investigations it

considers advisable and necessary for the discharge of the duties under this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 26.0135. WATERSHED MONITORING AND ASSESSMENT OF WATER QUALITY. (a) To ensure clean water, the commission shall establish the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state. In order to conserve public funds and avoid duplication of effort, subject to adequate funding under Section 26.0291, river authorities shall, to the greatest extent possible and under the supervision of the commission, conduct water quality monitoring and assessments in their own watersheds. Watershed monitoring and assessments involving agricultural or silvicultural nonpoint source pollution shall be coordinated through the State Soil and Water Conservation Board with local soil and water conservation districts. The water quality monitoring and reporting duties under this section apply only to a river authority that has entered into an agreement with the commission to perform those duties. The commission, either directly or through cooperative agreements and contracts with local governments, shall conduct monitoring and assessments of watersheds where a river authority is unable to perform an adequate assessment of its own watershed. The monitoring program shall provide data to identify significant long-term water quality trends, characterize water quality conditions, support the permitting process, and classify unclassified waters. The commission shall consider available monitoring data and assessment results in developing or reviewing wastewater permits and stream standards and in conducting other water quality management activities. The assessment must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed. The monitoring and assessment required by this section is a continuing duty, and the monitoring and assessment shall be periodically revised to show changes in the factors subject to assessment.

(b) In order to assist in the coordination and development of assessments and reports required by this section, a river authority shall organize and lead a basin-wide steering committee that includes persons paying fees under Section 26.0291, private citizens, the State Soil and Water Conservation Board, representatives from other appropriate state agencies, political subdivisions, and other persons with an interest in water quality matters of the watershed or river basin. Based on committee and public input, each steering committee shall develop water quality objectives and priorities that are achievable considering the available technology and economic impact. The objectives and priorities shall be used to develop work plans and allocate available resources under Section 26.0291. Each committee member shall help identify significant water quality issues within the basin and shall make available to the river authority all relevant water quality data held by the represented entities. A river authority shall also develop a public input process that provides for meaningful comments and review by private citizens and organizations on each basin summary report. A steering committee established by the commission to comply with this subsection in the absence of a river authority or other qualified local government is not subject to Chapter 2110, Government Code.

(c) The purpose of the monitoring and assessment required by this section is to identify significant issues affecting water quality within each watershed and river basin of the state. Each river authority shall submit quality assured data collected in the river basin to the commission. The commission shall use the data to develop the statewide water quality inventory and other assessment reports that satisfy federal reporting requirements. The data and reports shall also be used to provide sufficient information for the commission, the State Soil and Water Conservation Board, river authorities, and other governmental bodies to take appropriate action necessary to maintain and improve the quality of the state's water resources. The commission shall adopt rules that at a minimum require each river authority to:

(1) develop and maintain a basin-wide water quality monitoring program that minimizes duplicative monitoring, facilitates the assessment process, and targets monitoring to support the permitting and standards process;

(2) establish a watershed and river basin water quality database composed of quality assured data from river authorities,

wastewater discharge permit holders, state and federal agencies, and other relevant sources and make the data available to any interested person;

(3) identify water quality problems and known pollution sources and set priorities for taking appropriate action regarding those problems and sources;

(4) develop a process for public participation that includes the basin steering committee and public review and input and that provides for meaningful review and comments by private citizens and organizations in the local watersheds; and

(5) recommend water quality management strategies for correcting identified water quality problems and pollution sources.

(d) As required by commission rules, each river authority shall submit a written summary report to the commission, State Soil and Water Conservation Board, and Parks and Wildlife Department on the water quality assessment of the authority's watershed. The summary report must identify concerns relating to the watershed or bodies of water, including an identification of bodies of water with impaired or potentially impaired uses, the cause and possible source of use impairment, and recommended actions the commission may take to address those concerns. The summary report must discuss the public benefits from the water quality monitoring and assessment program, including efforts to increase public input in activities related to water quality and the effectiveness of targeted monitoring in assisting the permitting process. A river authority shall submit a summary report after the report has been approved by the basin steering committee and coordinated with the public and the commission. A river authority shall hold basin steering committee meetings and shall invite users of water and wastewater permit holders in the watershed who pay fees under Section 26.0291 to review the draft of the work plans and summary report. A river authority shall inform those parties of the availability and location of the summary report for inspection and shall solicit input from those parties concerning their satisfaction with or suggestions for modification of the summary report for the watershed, the operation or effectiveness of the watershed monitoring and assessment program authorized by this section, and the adequacy, use, or equitable apportionment of the program's costs and funds. A river authority shall summarize all comments received from persons who pay fees under Section 26.0291 and from steering committee members and shall submit

the report and the summaries to the governor, the lieutenant governor, and the speaker of the house of representatives not later than the 90th day after the date the river authority submits the summary report to the commission and other agencies.

(e) Each local government within the watershed of a river authority shall cooperate in making the assessment under Subsection (a) of this section and in preparing the report by providing to the river authority all information available to the local government about water quality within the jurisdiction of the local government, including the extraterritorial jurisdiction of a municipality.

(f) If more than one river authority is located in a watershed, all river authorities within the watershed shall cooperate in making the assessments and preparing the reports.

(g) For purposes of this section, solid waste and solid waste management shall have the same meaning as in Chapter 361, Health and Safety Code. Each river authority and local government is authorized and encouraged, but not required, to manage solid waste and to facilitate and promote programs for the collection and disposal of household consumer and agricultural products which contain hazardous constituents or hazardous substances and which, when disposed of improperly, represent a threat of contamination to the water resources of the state. Such programs may include the establishment of a permanent collection site, mobile collection sites, periodic collection events, or other methods which a river authority or local government may deem effective.

(h) The commission shall apportion, assess, and recover the reasonable costs of administering the water quality management programs under this section. Irrigation water rights, non-priority hydroelectric rights of a water right holder that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts, and water rights held in the Texas Water Trust for terms of at least 20 years will not be subject to this assessment. The cost to river authorities and others to conduct water quality monitoring and assessment shall be subject to prior review and approval by the commission as to methods of allocation and total amount to be recovered. The commission shall adopt rules to supervise and implement the water quality monitoring, assessment, and associated costs. The rules shall ensure that water users and wastewater dischargers do not pay excessive amounts, that a river authority may recover no more than the actual costs of administering

the water quality management programs called for in this section, and that no municipality shall be assessed cost for any efforts that duplicate water quality management activities described in Section 26.177.

(i) In this section:

(1) "Quality assured data" means data that complies with commission rules for the water quality monitoring program adopted under Subsection (c)(1), including rules governing the methods under which water samples are collected and analyzed and data from those samples is assessed and maintained.

(2) "River authority" means:

(A) a river authority as defined by Section 30.003 of this code that includes 10 or more counties; and

(B) any other river authority or special district created under Article III, Section 52, Subsection (b)(1) or (2), or Article XVI, Section 59, of the Texas Constitution that is designated by rule of the commission to comply with this section.

(j) Repealed by Acts 2001, 77th Leg., ch. 965, Sec. 3.06, eff. Sept. 1, 2001.

Added by Acts 1991, 72nd Leg., ch. 294, Sec. 1, eff. June 7, 1991. Amended by Acts 1993, 73rd Leg., ch. 53, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 316, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 564, Sec. 1.01, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, Sec. 4, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.293, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 553, Sec. 1, eff. June 13, 1995; Acts 1997, 75th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 333, Sec. 6, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1082, Sec. 3, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 234, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 3.05, 3.06, 16.03, 16.04, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.24, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.24, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 6, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 373 (H.B. 3618), Sec. 1, eff.

September 1, 2017.

Sec. 26.0136. WATER QUALITY MANAGEMENT. (a) The commission is the agency with primary responsibility for implementation of water quality management functions, including enforcement actions, within the state. Water quality management functions shall be oriented on a watershed basis in consideration of the priorities identified by river authorities and basin steering committees. The commission by rule shall coordinate the water quality responsibilities of river authorities within each watershed and shall, where appropriate, delegate water quality functions to local governments under Section 26.175 of this code. The State Soil and Water Conservation Board shall coordinate and administer all programs for abating agricultural or silvicultural nonpoint source pollution, as provided by Section 201.026, Agriculture Code.

(b) Nothing in this section is intended to enlarge, diminish, or supersede the water quality powers, including enforcement authority, authorized by law for river authorities, the State Soil and Water Conservation Board, and local governments. Nothing in this section is intended to enlarge, diminish, or supersede the responsibilities of the Texas Agricultural Extension Service and the Texas Agricultural Experiment Station to conduct educational programs and research regarding nonpoint source pollution and related water resource and water quality matters.

(c) The commission shall establish rules to make the optimum use of state and federal funding and grant programs related to water quality programs of the commission.

(d) In this section, "river authority" has the meaning assigned by Section 26.0135(i) of this code.

Added by Acts 1991, 72nd Leg., ch. 294, Sec. 2, eff. June 7, 1991. Amended by Acts 1993, 73rd Leg., ch. 53, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 101, Sec. 2, eff. Sept. 1, 1997.

Sec. 26.014. POWER TO ENTER PROPERTY. The members of the commission and employees and agents of the commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the

quality of water in the state or the compliance with any rule, regulation, permit or other order of the commission. Members, employees, or agents of the commission and commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the executive director may invoke the remedies authorized in Section 26.123 of this code.

Amended by Acts 1977, 65th Leg., p. 1640, ch. 644, Sec. 1. Renumbered from Sec. 21.064 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.067, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 883, Sec. 2, eff. Aug. 28, 1995.

Sec. 26.015. POWER TO EXAMINE RECORDS. The members of the commission and employees and agents of the commission may examine and copy during regular business hours any records or memoranda pertaining to the operation of any sewer system, disposal system, or treatment facility or pertaining to any discharge of waste or pollutants into any water in the state, or any other records required to be maintained.

Amended by Acts 1977, 65th Leg., p. 1640, ch. 644, Sec. 1. Renumbered from Sec. 21.065 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.069, eff. Sept. 1, 1985.

Sec. 26.0151. PUBLIC INFORMATION. (a) The commission shall provide for publishing or otherwise releasing on a regular basis as

public information:

(1) the results of inspections and investigations conducted under Section 26.014 of this code; and

(2) any other information routinely prepared by the commission relating to compliance with this chapter or with a rule or order adopted under this chapter.

(b) The commission shall establish a procedure by which, in response to a written request, a person or organization will be sent a copy of an inspection, investigation, or compliance report for a specified facility or system or for facilities or systems in a specified area or, on a regular basis, a copy of the information released under Subsection (a) of this section.

(c) The commission shall charge a reasonable fee for each copy sent under Subsection (b) of this section. The fee must be set at an amount that is estimated to recover the full cost of producing and copying and mailing a copy of the report and must be paid in cash or by cashier's check.

(d) A copy of a report shall be sent to the person or organization requesting it not later than the 30th day after the date on which the fee is paid or on which the report is made, whichever is later.

(e) This section does not apply to any information excepted under Subchapter C, Chapter 552, Government Code.

Added by Acts 1985, 69th Leg., ch. 749, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 21, eff. June 19, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(101), eff. Sept. 1, 1995.

Sec. 26.017. COOPERATION. The commission shall:

(1) encourage voluntary cooperation by the people, cities, industries, associations, agricultural interests, and representatives of other interests in preserving the greatest possible utility of water in the state;

(2) encourage the formation and organization of cooperative groups, associations, cities, industries, and other water users for the purpose of providing a medium to discuss and formulate plans for attainment of water quality control;

(3) establish policies and procedures for securing close

cooperation among state agencies that have water quality control functions;

(4) cooperate with the governments of the United States and other states and with official or unofficial agencies and organizations with respect to water quality control matters and with respect to formulation of interstate water quality control compacts or agreements, and when representation of state interests on a basin planning agency for water quality purposes is required under Section 3(c) of the Federal Water Pollution Control Act, as amended, or other federal legislation having a similar purpose, the representation shall include an officer or employee of the commission; and

(5) with respect to obtaining or administering the NPDES program in lieu of the government of the United States, not enter into any memorandum of agreement or other contractual relationship with or among state agencies or with the government of the United States which imposes any requirements upon the state other than or more stringent than those specifically set forth in Section 402(b) of the Federal Water Pollution Control Act, as amended.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.070, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 310, Sec. 2, eff. Aug. 28, 1995.

Sec. 26.018. CONTRACTS, INSTRUMENTS. With the approval of the commission, the executive director may make contracts and execute instruments that are necessary or convenient to the exercise of the commission's powers or the performance of its duties.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.070, eff. Sept. 1, 1985.

Sec. 26.019. ORDERS. The commission is authorized to issue orders and make determinations necessary to effectuate the purposes of this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 15, eff. Sept. 1, 1997.

Sec. 26.0191. TEMPORARY OR EMERGENCY ORDER RELATING TO DISCHARGE OF WASTE OR POLLUTANTS. The commission may issue a temporary or emergency order relating to the discharge of waste or pollutants under Section 5.509.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.071, 5.011, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 22, eff. June 19, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 16, eff. Sept. 1, 1997.

Sec. 26.020. HEARING POWERS. The commission may call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering the provisions of this chapter or the rules, orders, or other actions of the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 26.021. DELEGATION OF HEARING POWERS. (a) The commission may authorize the chief administrative law judge of the State Office of Administrative Hearings to call and hold hearings on any subject on which the commission may hold a hearing.

(b) The commission may also authorize the chief administrative law judge to delegate to one or more administrative law judges the authority to hold any hearing the chief administrative law judge calls.

(c) At any hearing called under this section, the chief administrative law judge or the administrative law judge to whom a hearing is delegated may administer oaths and receive evidence.

(d) The individual or individuals holding a hearing under the authority of this section shall report the hearing in the manner prescribed by the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 979, ch. 367, Sec. 8, eff. June 10, 1981; Acts 1995, 74th Leg., ch. 106, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 17, eff. Sept. 1, 1997.

Sec. 26.022. NOTICE OF HEARINGS; CONTINUANCE. (a) Except as otherwise provided in Sections 5.501, 5.504, 5.509, and 26.176, the provisions of this section apply to all hearings conducted in compliance with this chapter.

(b) Notice of the hearing shall be published at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, the commission has reason to believe persons reside who may be affected by the action that may be taken as a result of the hearing. The date of the publication shall be not less than 20 days before the date set for the hearing.

(c) If notice of the hearing is required by this chapter to be given to a person, the notice shall be served personally or mailed not less than 20 days before the date set for the hearing to the person at his last address known to the commission. If the party is not an individual, the notice may be given to any officer, agent, or legal representative of the party.

(d) The individual or individuals holding the hearing, called the hearing body, shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing a new notice.

(e) If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the person conducting the hearing at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed in Subsection (c) of this section at a reasonable time before the new setting, but it is not necessary to publish a newspaper notice of the new setting.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 18, eff. Sept. 1, 1997.

Sec. 26.023. WATER QUALITY STANDARDS. The commission by rule shall set water quality standards for the water in the state and may amend the standards from time to time. The commission has the sole and exclusive authority to set water quality standards for all water in the state. The commission shall consider the existence and effects of nonpoint source pollution, toxic materials, and nutrient loading in developing water quality standards and related waste load models for water quality. The commission shall develop standards based on all quality assured data obtained by the commission, including the local watershed and river basin database described by Section 26.0135(c)(2). In this section, "quality assured data" has the meaning assigned by Section 26.0135(i).

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.072, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 294, Sec. 3, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 101, Sec. 3, eff. Sept. 1, 1997.

Sec. 26.024. HEARINGS ON STANDARDS; CONSULTATION. Before setting or amending water quality standards, the commission shall:

(1) hold public hearings at which any person may appear and present evidence under oath, pertinent for consideration by the commission; and

(2) consult with the executive administrator to insure that the proposed standards are not inconsistent with the objectives of the state water plan.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.072 eff. Sept. 1, 1985.

Sec. 26.025. HEARINGS ON STANDARDS; NOTICE TO WHOM. (a) The commission shall provide notice of a hearing under Section 26.024 of this code by publishing the notice in the Texas Register.

(b) In addition to the requirements of Subsection (a) of this section, the commission shall also provide notice to each of the following that the commission believes may be affected:

(1) each local government whose boundary is contiguous to the water in question or whose boundaries contain all or part of the

water, or through whose boundaries the water flows; and

(2) the holders of permits from the commission to discharge waste into or adjacent to the water in question.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.072, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 21, eff. June 19, 1987; Acts 1991, 72nd Leg., ch. 392, Sec. 1, eff. June 6, 1991.

Sec. 26.026. STANDARDS TO BE PUBLISHED. The commission shall publish its water quality standards and amendments and shall make copies available to the public on written request.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.072, eff. Sept. 1, 1985.

Sec. 26.027. COMMISSION MAY ISSUE PERMITS. (a) The commission may issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. No permit shall be issued authorizing the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste. The commission may refuse to issue a permit when the commission finds that issuance of the permit would violate the provisions of any state or federal law or rule or regulation promulgated thereunder, or when the commission finds that issuance of the permit would interfere with the purpose of this chapter.

(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the commission containing all information reasonably required by the commission. The commission shall, at minimum, require an applicant who is an individual to provide:

(1) the individual's full legal name and date of birth;

(2) the street address of the individual's place of residence;

(3) the identifying number from the individual's driver's license or personal identification certificate issued by the state or country in which the individual resides;

(4) the individual's sex; and

(5) any assumed business or professional name of the individual filed under Chapter 71, Business & Commerce Code.

(c) A person may not commence construction of a treatment facility until the commission has issued a permit to authorize the discharge of waste from the facility, except with the approval of the commission.

(d) The commission may not require under this chapter any permit for the placing of dredged or fill materials into or adjacent to water in the state for the purpose of constructing, modifying, or maintaining facilities or structures, but this does not change or limit any authority the commission may have with respect to the control of water quality. The commission may adopt rules and regulations to govern and control the discharge of dredged or fill materials consistent with the purpose of this chapter.

Amended by Acts 1977, 65th Leg., p. 1645, ch. 644, Sec. 7.
Renumbered from Sec. 21.079 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.074, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 152, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.40, eff. April 1, 2009.

Sec. 26.0271. PERMITS AUTHORIZING REUSE WATER SYSTEM CONTRIBUTIONS AND DISCHARGES. (a) This section applies only to wastewater treatment facilities operated by an agency of a home-rule municipality with a population of one million or more.

(b) In any permit or amendment to a permit issued under this chapter, at the request of the applicant the commission may authorize a wastewater treatment facility to contribute treated domestic wastewater produced by the facility as reclaimed water to a reuse water system if the commission has approved the use of reclaimed water from the wastewater treatment facility.

(c) In any permit or amendment to a permit issued under this chapter, at the request of the applicant the commission shall authorize, subject to any required approval by the United States Environmental Protection Agency, a wastewater treatment facility to:

(1) contribute reclaimed water into a reuse water system

operated by the agency; and

(2) discharge reclaimed water contributed to a reuse water system at any outfall for which a discharge from the reuse water system is authorized in any permit issued for any wastewater treatment facility operated by the agency.

(d) For an effluent limitation violation occurring at an outfall permitted for reuse water system discharges by more than one wastewater treatment facility, the commission shall attribute the violation to the wastewater treatment facility contributing the reclaimed water causing the violation. For a violation that is not directly attributable to a specific wastewater treatment facility, the commission shall attribute the violation to the wastewater treatment facility contributing the greatest volume of reclaimed water to the reuse water system on the date of the violation.

Added by Acts 2009, 81st Leg., R.S., Ch. 409 (H.B. 1922), Sec. 1, eff. June 19, 2009.

Sec. 26.0272. PERMITS AUTHORIZING DISCHARGES FROM CERTAIN SEAWATER DESALINATION FACILITIES. (a) This section applies only to a facility that generates water treatment residuals from the desalination of seawater solely for use as part of an industrial process.

(b) The commission may issue a permit for the discharge of water treatment residuals from the desalination of seawater into the portion of the Gulf of Mexico inside the territorial limits of the state.

(c) Before issuing a permit under this section, the commission must evaluate the discharge of water treatment residuals from the desalination of seawater into the Gulf of Mexico for compliance with the state water quality standards adopted by the commission, the requirements of the Texas Pollutant Discharge Elimination System program, and applicable federal law.

(d) The commission may issue individual permits or a general permit under this section. If the commission elects to issue individual permits under this section, the commission must establish procedures for the review of an application that, at a minimum, comply with the requirements of Subchapter M, Chapter 5. If the commission elects to issue a general permit under this section, the

commission must comply with the requirements of Section 26.040.

Added by Acts 2015, 84th Leg., R.S., Ch. 829 (H.B. 4097), Sec. 5, eff. June 17, 2015.

Sec. 26.028. ACTION ON APPLICATION. (a) Notice of an application for a permit, permit amendment, or permit renewal shall be given to the persons who in the judgment of the commission may be affected by the application, except as provided by this section.

(b) For any application involving an average daily discharge of five million gallons or more, the notice shall be given:

(1) not later than 20 days before the date on which the commission acts on the application; and

(2) to each county judge in the county or counties located within 100 statute miles of the point of discharge who have requested in writing that the commission give that notice and through which water, into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge.

(c) Except as otherwise provided by this section, the commission, on the motion of a commissioner, or on the request of the executive director or any affected person, shall hold a public hearing on the application for a permit, permit amendment, or renewal of a permit.

(d) Notwithstanding any other provision of this chapter, the commission, at a regular meeting without the necessity of holding a public hearing, may approve an application to renew or amend a permit if:

(1) the applicant is not applying to:

(A) increase significantly the quantity of waste authorized to be discharged; or

(B) change materially the pattern or place of discharge;

(2) the activities to be authorized by the renewed or amended permit will maintain or improve the quality of waste authorized to be discharged;

(3) for NPDES permits, notice and the opportunity to request a public meeting shall be given in compliance with NPDES program requirements, and the commission shall consider and respond to all timely received and significant public comment; and

(4) the commission determines that an applicant's compliance history under the method for using compliance history developed by the commission under Section 5.754 raises no issues regarding the applicant's ability to comply with a material term of its permit.

(e) In considering an applicant's compliance history under Subsection (d)(4), the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127.

(f) Notice of an application under Subsection (d) shall be mailed to the mayor and health authorities for the city or town, and the county judge and health authorities for the county in which the waste is or will be discharged, at least 10 days before the commission meeting, and they may present information to the commission on the application.

(g) An application to renew a permit for a confined animal feeding operation which was issued between July 1, 1974, and December 31, 1977, may be set for consideration and may be acted on by the commission at a regular meeting without the necessity of holding a public hearing if the applicant does not seek to discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal.

(h) For the purposes of Subsection (c), the commission may act on the application without holding a public hearing if all of the following conditions are met:

(1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge;

(2) not less than 30 days before the date of action on the application by the commission, the applicant has served or mailed the commission's notice of the application to persons who in the judgment of the commission may be affected, including the county judges as required by Subsection (b). As part of his application the applicant shall submit an affidavit which lists the names and addresses of the

persons who may be affected by the application and includes the source of the list;

(3) within 30 days after the date of the newspaper publication of the commission's notice, neither a commissioner, the executive director, nor an affected person who objects to the application has requested a public hearing.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1984, ch. 781, Sec. 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 3156, ch. 828, Sec. 6, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 5.012, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 795, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 16.05, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1161, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.13, eff. September 1, 2011.

Sec. 26.0281. CONSIDERATION OF COMPLIANCE HISTORY. In considering the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste, the commission shall consider the compliance history of the applicant and its operator under the method for using compliance history developed by the commission under Section 5.754. In considering an applicant's compliance history under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this section, "environmental management system" has the meaning assigned by Section 5.127.

Added by Acts 1985, 69th Leg., ch. 626, Sec. 1, eff. Aug. 26, 1985.
Amended by Acts 2001, 77th Leg., ch. 965, Sec. 16.06, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1161, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.14, eff. September 1, 2011.

Sec. 26.0282. CONSIDERATION OF NEED AND REGIONAL TREATMENT

OPTIONS. In considering the issuance, amendment, or renewal of a permit to discharge waste, the commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order pursuant to provisions of this subchapter. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater.

Added by Acts 1989, 71st Leg., ch. 757, Sec. 1, eff. Sept. 1, 1989.

Sec. 26.0283. DENIAL OF APPLICATION FOR PERMIT; ASSISTANCE PROVIDED BY CERTAIN FORMER EMPLOYEES. (a) In this section, "former employee" means a person:

(1) who was previously employed by the commission as a supervisory or exempt employee; and

(2) whose duties during employment with the commission included involvement in or supervision of the commission's review, evaluation, or processing of applications.

(b) The commission shall deny an application for the issuance, amendment, renewal, or transfer of a permit and may not issue, amend, renew, or transfer the permit if the board determines that a former employee:

(1) participated personally and substantially as a former employee in the commission's review, evaluation, or processing of that application before leaving his employment with the commission; and

(2) after leaving his employment with the commission, provided assistance with the application for the issuance, amendment, renewal, or transfer of a permit, including assistance with preparation or presentation of the application or legal representation of the applicant.

(c) The commission shall provide an opportunity for a hearing to an applicant before denying an application under this section.

(d) Action taken under this section will not prejudice any application other than an application in which the former employee provided assistance.

Added by Acts 1989, 71st Leg., ch. 1175, Sec. 2, eff. Sept. 1, 1989.

Sec. 26.0286. PROCEDURES APPLICABLE TO PERMITS FOR CERTAIN CONCENTRATED ANIMAL FEEDING OPERATIONS. (a) In this section:

(1) "Sole-source surface drinking water supply" means a body of surface water that is designated as a sole-source surface drinking water supply in rules adopted by the commission.

(2) "Protection zone" means an area so designated by commission rule under Subsection (c).

(3) "Liquid waste handling system" means a system in which fresh water or wastewater is used for transporting and land applying waste.

(b) The commission shall process an application for authorization to construct or operate a concentrated animal feeding operation as a specific permit under Section 26.028 subject to the procedures provided by Subchapter M, Chapter 5, if, on the date the commission determines that the application is administratively complete, any part of a pen, lot, pond, or other type of control or retention facility or structure of the concentrated animal feeding operation is located or proposed to be located within the protection zone of a sole-source surface drinking water supply. For the purposes of this subsection, a land application area is not considered a control or retention facility.

(c) For the purposes of this section only, when adopting rules under Section 26.023 to set water quality standards for water in the state, the commission by rule shall designate a surface water body as a sole-source surface drinking water supply if that surface water body is identified as a public water supply in rules adopted by the commission under Section 26.023 and is the sole source of supply of a public water supply system, exclusive of emergency water connections. At the same time, the commission shall designate as a protection zone any area within the watershed of a sole-source surface drinking water supply that is:

(1) within two miles of the normal pool elevation of a body of surface water that is a sole-source surface drinking water supply;

(2) within two miles of that part of a perennial stream that is:

(A) a tributary of a sole-source surface drinking water supply; and

(B) within three linear miles upstream of the normal pool elevation of a sole-source surface drinking water supply; or

(3) within two miles of that part of a stream that is a sole-source surface drinking water supply, extending three linear miles upstream from the water supply intake.

(d) This section does not apply to a poultry operation that does not use a liquid waste handling system.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 3, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 681, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 966, Sec. 8.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 18.005, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 418 (S.B. 1707), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 418 (S.B. 1707), Sec. 2, eff. September 1, 2005.

Sec. 26.029. CONDITIONS OF PERMIT; AMENDMENT. (a) In each permit, the commission shall prescribe the conditions on which it is issued, including:

(1) the duration of the permit;

(2) the location of the point of discharge of the waste;

(3) the maximum quantity of waste that may be discharged under the permit at any time and from time to time;

(4) the character and quality of waste that may be discharged under the permit; and

(5) any monitoring and reporting requirements prescribed by the commission for the permittee.

(b) After a public hearing, notice of which shall be given to the permittee, the commission may require the permittee, from time to time, for good cause, in conformance with applicable laws, to conform to new or additional conditions.

(c) A permit does not become a vested right in the permittee.

(d) The notice required by Subsection (b) of this section shall be sent to the permittee at his last known address as shown by the records of the commission.

Amended by Acts 1977, 65th Leg., p. 1646, ch. 644, Sec. 8.
Renumbered from Sec. 21.081 and amended by Acts 1977, 65th Leg., p.

2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 985, ch. 367, Sec. 44, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.075, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1072, Sec. 20, eff. Sept. 1, 1997.

Sec. 26.0291. WATER QUALITY FEE. (a) An annual water quality fee is imposed on:

(1) each wastewater discharge permit holder, including the holder of a permit issued under Section 18.005, for each wastewater discharge permit held; and

(2) each user of water in proportion to the user's water right, through permit or contract, as reflected in the commission's records, provided that the commission by rule shall ensure that no fee shall be assessed for the portion of a municipal or industrial water right directly associated with a facility or operation for which a fee is assessed under Subdivision (1) of this subsection.

(b) The fee is to supplement any other funds available to pay expenses of the commission related to:

(1) inspecting waste treatment facilities; and

(2) enforcing the laws of the state and the rules of the commission governing:

(A) waste discharge and waste treatment facilities, including any expenses necessary to administer the national pollutant discharge elimination system (NPDES) program;

(B) the water resources of this state, including the water quality management programs under Section 26.0135; and

(C) any other water resource management programs reasonably related to the activities of the persons required to pay a fee under this section.

(c) The fee for each year is imposed on each permit or water right in effect during any part of the year. The commission may establish reduced fees for inactive permits.

(d) Irrigation water rights are not subject to a fee under this section.

(e) The commission by rule shall adopt a fee schedule for determining the amount of the fee to be charged. Beginning September 1, 2009, the maximum amount of a fee under this section is $100,000. On September 1 of each subsequent year, the commission shall adjust the maximum fee amount as necessary to reflect the percentage change

during the preceding year in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, published monthly by the United States Bureau of Labor Statistics, or its successor in function. Notwithstanding any adjustment for inflation under this subsection, the amount of the fee may not exceed $150,000 for each permit or contract and the maximum annual fee under this section for a wastewater discharge or waste treatment facility that holds a water right for the use of water by the facility is $150,000. In determining the amount of a fee under this section, the commission may consider:

(1) waste discharge permitting factors such as flow volume, toxic pollutant potential, level of traditional pollutant, and heat load;

(2) the designated uses and segment ranking classification of the water affected by discharges from the permitted facility;

(3) the expenses necessary to obtain and administer the NPDES program;

(4) the reasonable costs of administering the water quality management programs under Section 26.0135; and

(5) any other reasonable costs necessary to administer and enforce a water resource management program reasonably related to the activities of the persons required to pay a fee under this section.

(f) The fees collected under this section shall be deposited to the credit of the water resource management account, an account in the general revenue fund.

(g) The commission may adopt rules necessary to administer this section.

(h) A fee collected under this section is in addition to any other fee that may be charged under this chapter.

Added by Acts 1989, 71st Leg., ch. 642, Sec. 3. Amended by Acts 1993, 73rd Leg., ch. 746, Sec. 5; Acts 1995, 74th Leg., ch. 310, Sec. 3, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 8, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 3.04, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 157 (H.B. 1433), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 11, eff. June 17, 2015.

Sec. 26.0292. FEES CHARGED TO AQUACULTURE FACILITIES. (a) "Aquaculture facility" means a facility engaged in aquaculture as defined in Section 134.001, Agriculture Code.

(b) Notwithstanding Sections 26.0135 and 26.0291, the combined fees charged to an aquaculture facility under those sections may not total more than $5,000 in any year.

(c) The commission by rule shall provide that among aquaculture facilities, the fees charged under this section are reasonably assessed according to the pollutant load of the facility.

Added by Acts 1999, 76th Leg., ch. 1239, Sec. 10, eff. Sept. 1, 1999.

Sec. 26.030. PERMIT; EFFECT ON RECREATIONAL WATER. (a) In considering the issuance of a permit to discharge effluent into any body of water having an established recreational standard, the commission shall consider any unpleasant odor quality of the effluent and the possible adverse effect that it might have on the receiving body of water, and the commission may consider the odor as one of the elements of the water quality of the effluent.

(b) In considering the issuance of a permit to discharge effluent comprised primarily of sewage or municipal waste into any body of water that crosses or abuts any park, playground, or schoolyard within one mile of the point of discharge, the commission shall consider any unpleasant qualities of the effluent, including unpleasant odor, and any possible adverse effects that the discharge of the effluent might have on the recreational value of the park, playground, or schoolyard.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 424, Sec. 1, eff. June 11, 1985.

Sec. 26.0301. WASTEWATER OPERATIONS COMPANY REGISTRATION AND OPERATOR LICENSING. (a) The holders of permits to discharge wastewater from a sewage treatment facility shall employ a treatment plant operator holding a valid license issued by the commission under Chapter 37 for the type of facility being operated.

(b) Every person that is in the business of providing sewage

treatment or collection facility services under contract must hold a valid registration issued by the commission under Chapter 37.

(c) A person who performs process control activities at a sewage treatment facility or supervises the maintenance of a sewage collection system must hold a license issued by the commission under Chapter 37.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 5.010, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 400, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 564, Sec. 1.04, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, Sec. 6, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 9, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1072, Sec. 21, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 6, eff. Sept. 1, 2001.

Sec. 26.0311. STANDARDS FOR CONTROL OF GRAYWATER. (a) In this section, "graywater" has the meaning provided by Section 341.039, Health and Safety Code.

(b) The commission by rule shall adopt and implement minimum standards for the use of graywater for:

(1) irrigation and other agricultural purposes;

(2) domestic use, to the extent consistent with Section 341.039, Health and Safety Code;

(3) commercial purposes; and

(4) industrial purposes.

(b-1) The standards adopted by the commission under Subsection (b)(2) must allow the use of graywater for toilet and urinal flushing.

(c) The standards adopted by the commission under Subsection (b) must assure that the use of graywater is not a nuisance and does not damage the quality of surface water and groundwater in this state.

Added by Acts 1987, 70th Leg., ch. 541, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 233, Sec. 1, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 689, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 545 (H.B. 1902), Sec. 3, eff. June 16, 2015.

Sec. 26.033. RATING OF WASTE DISPOSAL SYSTEMS. (a) After consultation with the Texas Department of Health, the commission shall provide by rule for a system of approved ratings for municipal waste disposal systems and other waste disposal systems which the commission may designate.

(b) The owner or operator of a municipal waste disposal system which attains an approved rating has the privilege of erecting signs of a design approved by the commission on highways approaching or inside the boundaries of the municipality, subject to reasonable restrictions and requirements which may be established by the Texas Department of Transportation.

(c) In addition, the owner or operator of any waste disposal system, including a municipal system, which attains an approved rating has the privilege of erecting signs of a design approved by the commission at locations which may be approved or established by the commission, subject to such reasonable restrictions and requirements which may be imposed by any governmental entity having jurisdiction.

(d) If the waste disposal system fails to continue to achieve an approved rating, the commission may revoke the privilege. On due notice from the commission, the owner or operator of the system shall remove the signs.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.080, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 165, Sec. 22(74), eff. Sept. 1, 1995.

Sec. 26.034. APPROVAL OF DISPOSAL SYSTEM PLANS. (a) The commission may, on a case-by-case basis, review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes.

(b) Before beginning construction, every person who proposes to construct or materially alter the efficiency of any treatment works to which this section applies shall submit completed plans and specifications to the commission.

(c) The commission by rule shall adopt standards to determine which plans and specifications the commission will review for

approval. If the commission excludes certain plans and specifications from review and approval, the commission shall require that a registered professional engineer submit the plans to the commission and make a finding that the plans and specifications are in substantial compliance with commission standards and that any deviation from those standards is based on the best professional judgment of the registered professional engineer.

(d) Except as provided by Subsection (e), the commission may not require plans and specifications for a sewer system that transports primarily domestic waste to be submitted to the commission from:

(1) a municipality if:

(A) the municipality has its own internal engineering review staff;

(B) the plans and specifications subject to review are prepared by private engineering consultants; and

(C) the review is conducted by a registered professional engineer who is an employee of or consultant to the municipality separate from the private engineering consultant charged with the design of the plans and specifications under review; or

(2) an entity that is required by local ordinance to submit the plans and specifications for review and approval to a municipality.

(e) If the commission finds that a municipality's review and approval process does not provide for substantial compliance with commission standards, the commission shall require all plans and specifications reviewed by the municipality under Subsection (d) to be submitted to the commission for review and approval.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.081, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 397, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 924, Sec. 1, eff. Aug. 28, 1995.

Sec. 26.0345. DISCHARGE FROM AQUACULTURE FACILITIES. (a) In addition to wastewater permit conditions established under the authority of Sections 5.102, 5.103, 5.120, and 26.040, the Texas Natural Resource Conservation Commission, in consultation with the

Department of Agriculture and the Parks and Wildlife Department, shall establish permit conditions relating to suspended solids in a discharge permit for an aquaculture facility located within the coastal zone and engaged in shrimp production that are based on levels and measures adequate to prevent:

(1) potential significant adverse responses in aquatic organisms, changes in flow patterns of receiving waters, or untimely filling of bays with settled solids; or

(2) a potential significant adverse response in aquatic plants from attenuation of light by suspended solids in discharges.

(b) In this section, "coastal zone" has the meaning assigned by Section 33.004, Natural Resources Code.

Added by Acts 1999, 76th Leg., ch. 1239, Sec. 9, eff. Sept. 1, 1999.

Sec. 26.035. FEDERAL GRANTS. The executive director with the approval of the commission or the executive administrator with the approval of the board, as applicable under this code or other laws, may execute agreements with the United States Environmental Protection Agency or any other federal agency that administers programs providing federal cooperation, assistance, grants, or loans for research, development, investigation, training, planning, studies, programming, and construction related to methods, procedures, and facilities for the collection, treatment, and disposal of waste or other water quality control activities. The commission or board may accept federal funds for these purposes and for other purposes consistent with the objectives of this chapter and may use the funds as prescribed by law or as provided by agreement.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.081, eff. Sept. 1, 1985.

Sec. 26.036. WATER QUALITY MANAGEMENT PLANS. (a) The executive director shall develop and prepare, and from time to time revise, comprehensive water quality management plans for the different areas of the state, as designated by the commission.

(b) The executive director may contract with local governments, regional planning commissions, planning agencies, other state

agencies, colleges and universities in the state, and any other qualified and competent person to assist in developing and preparing, and from time to time revising, water quality management plans for areas designated by the commission.

(c) With funds provided for the purpose by legislative appropriation, the commission may make grants or interest-free loans to, or contract with, local governments, regional planning commissions, and planning agencies to pay administrative and other expenses of such entities for developing and preparing, and from time to time revising, water quality management plans for areas designated by the commission. The period of time for which funding under this provision may be provided for developing and preparing or for revising a plan may not exceed three consecutive years in each instance. Any loan made pursuant to this subsection shall be repaid when the construction of any project included in the plan is begun.

(d) Any person developing or revising a plan shall, during the course of the work, consult with the commission and with local governments and other federal, state, and local governmental agencies which in the judgment of the commission may be affected by or have a legitimate interest in the plan.

(e) Insofar as may be practical, the water quality management plans shall be reasonably compatible with the other governmental plans for the area, such as area or regional transportation, public utility, zoning, public education, recreation, housing, and other related development plans.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.082, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 194, Sec. 1, eff. May 24, 1999.

Sec. 26.037. APPROVAL OF PLANS. (a) The executive director may approve water quality management plans and revisions after a public participation opportunity has been provided that at a minimum meets federal public participation requirements. Approval of water quality management plans shall be consistent with applicable state and federal requirements. The commission may adopt rules governing approval of water quality management plans. The commission shall provide an opportunity for an interested person to seek commission review of the executive director's decision regarding a water quality

management plan approval or revision.

(b) When a water quality management plan has been approved as provided in this section, the plan may be furnished to the Federal Environmental Protection Agency or any other federal official or agency in fulfillment of any federal water quality management planning requirement specified for any purpose by the federal government.

(c) The board and the commission may use an approved water quality management plan or a plan in progress but not completed or approved in reviewing and making determinations on applications for permits and on applications for financial assistance for construction of treatment works.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.083, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 194, Sec. 2, eff. May 24, 1999.

Sec. 26.038. FISCAL CONTROL ON WATER QUALITY MANAGEMENT PLANNING. In administering the program for making grants and loans to and contracting with local governments, regional planning commissions, and planning agencies as authorized in Subsection (c) of Section 26.036 of this code, the commission shall adopt rules and procedures for the necessary engineering review and supervision, fiscal control, and fund accounting. The fiscal control and fund accounting procedures are supplemental to other procedures prescribed by law.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.084, eff. Sept. 1, 1985.

Sec. 26.039. ACCIDENTAL DISCHARGES AND SPILLS. (a) As used in this section:

(1) "Accidental discharge" means an act or omission through which waste or other substances are inadvertently discharged into water in the state.

(2) "Spill" means an act or omission through which waste or other substances are deposited where, unless controlled or removed, they will drain, seep, run, or otherwise enter water in the state.

(3) "Other substances" means substances which may be useful or valuable and therefore are not ordinarily considered to be waste, but which will cause pollution if discharged into water in the state.

(b) Except as provided by Subsection (g), whenever an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility shall notify the commission as soon as possible and not later than 24 hours after the occurrence. The individual's notice to the commission must include the location, volume, and content of the discharge or spill.

(c) Activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue. The safety and preventive measures which may be required shall be commensurate with the potential harm which could result from the escape of the waste or other substances.

(d) The provisions of this section are cumulative of the other provisions in this chapter relating to waste discharges, and nothing in this section exempts any person from complying with or being subject to any other provision of this chapter.

(e) Except as provided by Subsection (g), if an accidental discharge or spill described by Subsection (b) from a wastewater treatment or collection facility owned or operated by a local government may adversely affect a public or private source of drinking water, the individual shall also notify appropriate local government officials and local media.

(f) The commission by rule shall specify the conditions under which an individual must comply with Subsection (e) and prescribe procedures for giving the required notice. The rules must also state the content of the notice and the manner of giving notice. In formulating the rules, the commission shall consider:

(1) the nature and extent of the discharge or spill;

(2) the potential effect of the discharge or spill; and

(3) regional information about the susceptibility of a particular drinking water source to a specific type of pollution.

(g) The individual is not required to notify the commission of an accidental discharge or spill of treated or untreated domestic

wastewater under Subsection (b) or officials or media under Subsection (e) of a single accidental discharge or spill that:

(1) occurs at a wastewater treatment or collection facility owned or operated by a local government;

(2) has a volume of 1,000 gallons or less;

(3) is not associated with another simultaneous accidental discharge or spill;

(4) is controlled or removed before the accidental discharge or spill:

(A) enters water in the state; or

(B) adversely affects a public or private source of drinking water;

(5) will not endanger human health or safety or the environment; and

(6) is not otherwise subject to local regulatory control and reporting requirements.

(h) The commission by rule shall establish standard methods for calculating the volume of an accidental discharge or spill to be used for the purposes of this section.

(i) The individual shall calculate the volume of an accidental discharge or spill using an established standard method to determine whether the discharge or spill is exempted under Subsection (g) from the notification requirements of this section.

(j) The individual shall submit to the commission at least once each month a summary of accidental discharges and spills described by Subsection (g) that occurred during the preceding month. The commission by rule shall:

(1) consider the compliance history of the individual; and

(2) establish procedures for formatting and submitting a summary, including requirements that a summary include the location, volume, and content of each accidental discharge or spill.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.085, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 208, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 251 (S.B. 912), Sec. 1, eff. September 1, 2015.

Sec. 26.040. GENERAL PERMITS. (a) The commission may issue a general permit to authorize the discharge of waste into or adjacent to waters in the state by category of dischargers in a particular geographical area of the state or in the entire state if the dischargers in the category discharge storm water or:

(1) engage in the same or substantially similar types of operations;

(2) discharge the same types of waste;

(3) are subject to the same requirements regarding effluent limitations or operating conditions;

(4) are subject to the same or similar monitoring requirements; and

(5) are, in the commission's opinion, more appropriately regulated under a general permit than under individual permits based on commission findings that:

(A) the general permit has been drafted to assure that it can be readily enforced and that the commission can adequately monitor compliance with the terms of the general permit; and

(B) the category of discharges covered by the general permit will not include a discharge of pollutants that will cause significant adverse effects to water quality.

(b) The commission shall publish notice of a proposed general permit in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed general permit and in the Texas Register. For a statewide general permit, the commission shall designate one or more newspapers of statewide or regional circulation and shall publish notice of the proposed statewide general permit in each designated newspaper in addition to the Texas Register. The notice must include an invitation for written comments by the public to the commission regarding the proposed general permit and shall be published not later than the 30th day before the commission adopts the general permit. The commission by rule may require additional notice to be given.

(c) The commission may hold a public meeting to provide an additional opportunity for public comment. The commission shall give notice of a public meeting under this subsection by publication in the Texas Register not later than the 30th day before the date of the meeting.

(d) If the commission receives public comment relating to

issuance of a general permit, the commission may issue the general permit only after responding in writing to the comments. The commission shall issue a written response to comments on the permit at the same time the commission issues or denies the permit. The response is available to the public and shall be mailed to each person who made a comment.

(e) A general permit may provide that a discharger who is not covered by an individual permit may obtain authorization to discharge waste under a general permit by submitting to the commission written notice of intent to be covered by the general permit. A general permit shall specify the deadline for submitting and the information required to be included in a notice of intent. A general permit may authorize a discharger to begin discharging under the general permit immediately on filing a complete and accurate notice of intent, or it may specify a date or period of time after the commission receives the discharger's notice of intent on which the discharger may begin discharging unless the executive director before that time notifies the discharger that it is not eligible for authorization under the general permit.

(f) A general permit may authorize a discharger to discharge without submitting a notice of intent if the commission finds that a notice of intent requirement would be inappropriate.

(g) Authorization to discharge under a general permit does not confer a vested right. After written notice to the discharger, the executive director may suspend a discharger's authority to discharge under a general permit and may require a person discharging under a general permit to obtain authorization to discharge under an individual permit as required by Section 26.027 or other law.

(h) Notwithstanding other provisions of this chapter, the commission, after hearing, shall deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the discharger's compliance history is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections. A hearing under this subsection is not subject to Chapter 2001, Government Code.

(i) A general permit may be issued for a term not to exceed five years. After notice and comment as provided by Subsections (b)-(d), a general permit may be amended, revoked, or canceled by the commission or renewed by the commission for an additional term or

terms not to exceed five years each. A general permit remains in effect until amended, revoked, or canceled by the commission or, unless renewed by the commission, until expired. If before a general permit expires the commission proposes to renew that general permit, that general permit remains in effect until the date on which the commission takes final action on the proposed renewal.

(j) The commission may through a renewal or amendment process for a general permit add or delete requirements or limitations to the permit. The commission shall provide a reasonable time to allow a discharger covered by the general permit to make the changes necessary to comply with the additional requirements.

(k) The commission may impose a reasonable and necessary fee under Section 26.0291 on a discharger covered by a general permit.

(l) The issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit or of authority to discharge under a general permit is not subject to Subchapters C-F, Chapter 2001, Government Code.

(m) The commission may adopt rules as necessary to implement and administer this section.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.086, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1085, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 16.07, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.15, eff. September 1, 2011.

Sec. 26.0405. GENERAL PERMITS FOR CERTAIN SEWAGE TREATMENT AND DISPOSAL SYSTEMS. (a) To the extent not in conflict with state water quality standards or federal law, the commission shall issue one or more general permits for the discharge of treated sewage into or adjacent to water in this state by a sewage treatment and disposal system if the system:

(1) produces not more than 5,000 gallons of waste each day;

(2) is in a county with a population of 2.8 million or more that is an authorized agent under Chapter 366, Health and Safety Code, and that has:

(A) adopted a resolution under Section 7.352 that authorizes the county to exercise enforcement power under Subchapter H, Chapter 7; and

(B) entered into an agreement with the commission to inspect, investigate, and otherwise monitor compliance with the permit;

(3) provides sewage treatment and disposal for a single-family residence for which the commission determines a connection to an existing or proposed area-wide or regional waste collection, treatment, and disposal system is not feasible; and

(4) is on a property that:

(A) was subdivided and developed before January 1, 1979; and

(B) is of insufficient size to accommodate on-site disposal of all wastewater in compliance with Chapter 366, Health and Safety Code.

(b) A person who discharges under a permit issued under this section is not required to hold a license or registration under Section 26.0301.

(c) For a permit issued under this section, the commission shall for each system:

(1) specify the design, operation, and maintenance requirements; and

(2) establish the primary and secondary treatment requirements.

(d) A system for which a permit is issued under this section is subject to design criteria established under Chapter 366, Health and Safety Code, and is not subject to design criteria established under Section 26.034.

Added by Acts 1999, 76th Leg., ch. 256, Sec. 1, eff. May 28, 1999.
Amended by Acts 2001, 77th Leg., ch. 880, Sec. 7, eff. Aug. 27, 2001.

Sec. 26.041. HEALTH HAZARDS. The commission may use any means provided by this chapter to prevent a discharge of waste that is injurious to public health.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.086, eff. Sept. 1, 1985.

Sec. 26.042. MONITORING AND REPORTING. (a) The commission may prescribe reasonable requirements for a person making discharges of any waste or of any pollutant to monitor and report on his activities concerning collection, treatment, and disposal of the waste or pollutant.

(b) The commission may, by regulation, order, permit, or otherwise require the owner or operator of any source of a discharge of pollutants into any water in the state or of any source which is an industrial user of a publicly owned treatment works to:

(1) establish and maintain such records;

(2) make such reports;

(3) sample any discharges in accordance with such methods, at such locations, at such intervals, and in such manner as the commission shall prescribe; and

(4) provide such other information relating to discharges of pollutants into any water in the state or to introductions of pollutants into publicly owned treatment works as the commission may reasonably require.

(c) When in the judgment of the commission significant water quality management benefits will result or water quality management needs justify, the commission may also prescribe reasonable requirements for any person or persons making discharges of any waste or of any pollutant to monitor and report on the quality of any water in the state which the commission has reason to believe may be materially affected by the discharges.

Amended by Acts 1977, 65th Leg., p. 1640, ch. 644, Sec. 1. Renumbered from Sec. 21.094 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.088, eff. Sept. 1, 1985.

Sec. 26.043. THE STATE OF TEXAS WATER POLLUTION CONTROL COMPACT. (a) The legislature recognizes that various river authorities and municipal water districts and authorities of the state have signed, and that others are authorized to sign and may sign, a document entitled "The State of Texas Water Pollution Control Compact" (hereinafter called the "compact"), which was approved by

Order of the Texas Water Quality Board on March 26, 1971, and which is now on file in the official records of the commission, wherein each of the signatories is by law an official agency of the state, created pursuant to Article XVI, Section 59 of the Texas Constitution and operating on a multiple county or regional basis, and that collectively those signatories constitute an agency of the state authorized to agree to pay, and to pay, for and on behalf of the state not less than 25 percent of the estimated costs of all water pollution control projects in the state, wherever located, for which federal grants are to be made pursuant to Clause (7), Subsection (b), Section 1158, Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1158), or any similar law, in accordance with and subject to the terms and conditions of the compact. The compact provides a method for taking advantage of increased federal grants for water pollution control projects by virtue of the state payment which will be made from the proceeds from the sale of bonds by the signatories to the compact. The compact is hereby ratified and approved, and it is hereby provided that Section 30.026 of this code shall not constitute a limitation or restriction on any signatory with respect to any contract entered into pursuant to the compact or with respect to any water pollution control project in the state, wherever located, for which the aforesaid federal grants are to be made, and such signatory shall not be required to obtain the consent of any other river authority or conservation and reclamation district which is not a signatory with respect to any such contract or project. Each signatory to the compact is empowered and authorized to do any and all things and to take any and all action and to execute any and all contracts and documents which are necessary or convenient in carrying out the purposes and objectives of the compact and issuing bonds pursuant thereto, with reference to any water pollution control project in the state, wherever located, for which the aforesaid federal grants are to be made.

(b) It is further found, determined, and enacted that all bonds issued pursuant to said compact and all bonds issued to refund or refinance same are and will be for water quality enhancement purposes, within the meaning of Article III, Section 49-d-1, as amended, of the Texas Constitution and any and all bonds issued by a signatory to said compact to pay for all or any part of a project pursuant to the compact and any bonds issued to refund or refinance any such bonds may be purchased by the Texas Water Development Board

with money received from the sale of Texas Water Development Board bonds pursuant to said Article III, Section 49-d-1, as amended, of the Texas Constitution. The bonds or refunding bonds shall be purchased directly from any such signatory at such price as is necessary to provide the state payment and any other part of the cost of the project or necessary to accomplish the refunding, and all purchases shall constitute loans for water quality enhancement. The bonds or refunding bonds shall have the characteristics and be issued on such terms and conditions as are acceptable to the board. The proceeds received by any such signatory from the sale of any such bonds shall be used to provide the state payment pursuant to the compact and any other part of the cost of the project, and the proceeds from the sale of any such refunding bonds to refund any outstanding bonds issued pursuant to the compact shall be used to pay off and retire the bonds being refunded thereby.

(c) This subsection is not intended to interfere in any way with the operation of Article III, Section 49-d-1, as amended, of the Texas Constitution or the enabling legislation enacted pursuant thereto, and the aforesaid compact shall constitute merely a complementary or supplemental method for providing the state payment solely in instances that it is deemed necessary or advisable by the board.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 977, Sec. 23, eff. June 19, 1987.

Sec. 26.044. DISPOSAL OF BOAT SEWAGE. (a) In this section:

(1) "Boat" means any vessel or other watercraft, whether moved by oars, paddles, sails, or other power mechanism, inboard or outboard, or any other vessel or structure floating on surface water in the state, whether or not capable of self-locomotion, including but not limited to cabin cruisers, houseboats, barges, marinas, and similar floating objects. The term does not include a vessel subject to inspection under 46 U.S.C. Section 3301.

(2) "Boat pump-out station" means any private or public shoreside, mobile, or floating installation either independent of or in addition to an organized waste collection, treatment, and disposal system used to receive boat sewage.

(3) "Shoreside, mobile, or floating installation" means

marinas and other installations servicing boats on surface water in the state.

(4) "Surface water in the state" means all lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico out three nautical miles into the Gulf, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state, except waters beyond three nautical miles of any shore in the state.

(b) The commission shall issue rules concerning the disposal of sewage from boats located or operated on surface water in the state. The rules of the commission shall include provisions for the establishment of standards for sewage disposal devices, the certification of sewage disposal devices, including shoreside and mobile boat pump-out stations, and the visible and conspicuous display of evidence of certification of sewage disposal devices on each boat equipped with such device and on each shoreside and mobile pump-out device.

(c) The commission may delegate the administration and performance of the certification function to the executive director or to another governmental entity. The commission or delegated authority shall collect the following fees from applicants for certification:

Boat Pump-out Station (biennial):	
Initial Certificates for Pump-out	$35
Pump-out Renewal	$25
Marine Sanitation Device (biennial):	
Boat over 26 Feet or Houseboat	$15
Boat 26 Feet or less with Permanent Device	$15

All certification fees shall be paid to the commission or delegated authority performing the certification function. All fees collected by any state agency shall be deposited to the credit of the water resource management account for use by the commission or delegated authority.

(d) Before issuing any rules under Subsection (b), the commission or any person authorized by it under Section 26.021 on request may hold hearings on those rules in Austin and in five other locations in the state in order to provide the best opportunity for

all citizens of the state to appear and present evidence to the commission.

(e) Notice of the hearing in Austin shall be published at least once in one or more newspapers having general circulation in the state. Notice of each of the other hearings shall be published at least once in one or more newspapers having general circulation in the region in which each hearing is to be held.

(f) Copies of each rule issued by the commission under this section shall be filed in the offices of the commission in Austin, in the office of the Secretary of State in Austin, and posted on the commission's Internet website. The commission shall provide for publication of notice of each rule issued under this section in at least one newspaper of general circulation in each county of the state and shall furnish the county judge of each county of the state a copy of the rules.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 239, Sec. 79, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 795, Sec. 1.089, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 24, eff. June 19, 1987; Acts 1997, 75th Leg., ch. 333, Sec. 10, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 579 (S.B. 2445), Sec. 1, eff. September 1, 2009.

Sec. 26.045. PUMP-OUT FACILITIES FOR BOAT SEWAGE. (a) In this section "boat," "boat pump-out station," "shoreside, mobile, or floating installation," and "surface water in the state" have the meanings assigned by Section 26.044.

(b) After a public hearing and after making every reasonable effort to bring about the establishment of an adequate number of boat pump-out stations on surface water in the state, the commission may enter an order requiring the establishment of boat pump-out stations by a local government that has any jurisdiction over at least a portion of the surface water in the state or over land immediately adjacent to the water.

(c) If a local government is authorized to issue authorization for the operation of shoreside, mobile, or floating installations, the local government may require the installation and operation of

boat pump-out stations where necessary. The local government shall require the installation and operation of boat pump-out stations if required by the commission.

(d) A local government responsible for establishing boat pump-out stations may issue bonds or may use general revenue funds from normal operations to finance the construction and operation of the pump-out facilities. Pump-out stations established as a result of this section will be self-sustaining with respect to costs and revenues collected from users of said facilities, and local governments are authorized to levy reasonable, appropriate charges or fees to recover cost of installation and operation of the pump-out stations. Nothing in this section is to be construed to require any local government to rebate to the State of Texas funds collected pursuant to this program.

(e) The hearings required by this section and other acts of the commission in carrying out the provisions of this section shall be handled as provided in the rules of the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.090, eff. Sept. 1, 1985.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 579 (S.B. 2445), Sec. 2, eff. September 1, 2009.

Sec. 26.046. HEARINGS ON PROTECTION OF EDWARDS AQUIFER FROM POLLUTION. (a) As used in this section, "Edwards Aquifer" means that portion of an arcuate belt of porous, waterbearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Kendall, Comal, and Hays counties, respectively, and as defined in the most recent rules of the commission for the protection of the quality of the potable underground water in those counties.

(b) Annually, the commission shall hold a public hearing in Kinney, Uvalde, Medina, Bexar, Kendall, Comal, or Hays County, and a hearing in any other of those counties whose commissioners court requests that a hearing be held in its county, to receive evidence from the public on actions the commission should take to protect the

Edwards Aquifer from pollution. Notice of the public hearing shall be given and the hearing shall be conducted in accordance with the rules of the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.091, eff. Sept. 1, 1985.

Sec. 26.0461. FEES FOR EDWARDS AQUIFER PLANS. (a) The commission may impose fees for processing plans or amendments to plans that are subject to review and approval under the commission's rules for the protection of the Edwards Aquifer and for inspecting the construction and maintenance of projects covered by those plans.

(b) The plans for which fees may be imposed are:

(1) water pollution abatement plans;

(2) plans for sewage collection systems;

(3) plans for hydrocarbon storage facilities or hazardous substance storage facilities; and

(4) contributing zone plans.

(c) The commission by rule shall adopt a fee schedule for fees that it may impose under this section.

(d) Except as provided by Subsection (d-1), a fee imposed under this section may not be less than $100 or more than $6,500.

(d-1) A fee imposed under this section may not be more than $13,000 if the fee is for a water pollution abatement or contributing zone plan for a development of more than 40 acres.

(e) A fee charged under this section must be based on the following criteria:

(1) if a pollution abatement or contributing zone plan, the area or acreage covered by the plan;

(2) if a sewage collection systems plan, the number of linear feet of pipe or line;

(3) if a hydrocarbon storage facility or hazardous substance storage facility plan, the number of tanks; and

(4) the type of activity subject to regulation.

(f) The executive director shall charge and collect a fee imposed under this section and shall record the time at which the fee is due and render an account to the person charged with the fee.

(g) A fee imposed under this section is a separate charge in addition to any other fee that may be provided by law or rules of the commission.

(h) A fee collected under this section shall be deposited in the State Treasury to the credit of a special program to be used only for administering the commission's Edwards Aquifer program, including:

(1) monitoring surface water, stormwater, and groundwater quality in the Edwards Aquifer program area; and

(2) developing geographic information systems (GIS) data layers for the Edwards Aquifer program.

Added by Acts 1987, 70th Leg., ch. 417, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1993, 73rd Leg., ch. 564, Sec. 1.05, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, Sec. 7, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 11, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 743, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1088 (H.B. 3098), Sec. 1, eff. September 1, 2007.

Sec. 26.047. PERMIT CONDITIONS AND PRETREATMENT STANDARDS CONCERNING PUBLICLY OWNED TREATMENT WORKS. (a) The commission shall impose as conditions in permits for the discharge of pollutants from publicly owned treatment works requirements for information to be provided by the permittee concerning new introductions of pollutants or substantial changes in the volume or character of pollutants being introduced into such treatment works.

(b) The commission is authorized to impose as conditions in permits for the discharge of pollutants from publicly owned treatment works appropriate measures to establish and insure compliance by industrial users with any system of user charges required under state or federal law or any regulations or guidelines promulgated thereunder.

(c) The commission is authorized to apply, and to enforce pursuant to Subchapter D of this chapter, against industrial users of publicly owned treatment works, toxic effluent standards and pretreatment standards for the introduction into such treatment works of pollutants which interfere with, pass through, or otherwise are

incompatible with such treatment works.

Added by Acts 1977, 65th Leg., p. 1646, ch. 644, Sec. 9. Renumbered from Sec. 21.099 and amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.092, eff. Sept. 1, 1985.

Sec. 26.048. PROHIBITION OF DISCHARGE TO A PLAYA FROM A CONCENTRATED ANIMAL FEEDING OPERATION. (a) Except as provided by Subsections (b) and (c) of this section, the commission may adopt rules under this section to prohibit:

(1) the discharge of agricultural waste from a concentrated animal feeding operation into a playa; or

(2) the use of a playa as a wastewater retention facility for agricultural waste.

(b) A concentrated animal feeding operation authorized to discharge agricultural waste into a playa or to use a playa as a wastewater retention facility for agricultural waste under this chapter before the adoption of rules under this section may continue that discharge into the playa or use of the playa for the retention of agricultural waste after the adoption of those rules. The operator of a concentrated animal feeding operation that uses a playa as a wastewater retention facility annually shall collect a water sample from each well providing water for the facility and shall have the sample analyzed for chlorides and nitrates. The operator shall provide copies of the analysis to the commission. If the results of an analysis when compared with analysis of water collected at an earlier date from the same well indicate a significant increase in the levels of chlorides or nitrates, the commission shall require that an investigation be made to determine the source of the contamination. If it is determined that contamination is occurring as a result of use of the playa as a retention facility for the waste from the concentrated feeding operation, the commission shall require action to correct the problem.

(c) The authorization for a concentrated animal feeding operation to use a playa for agricultural waste discharge or retention under Subsection (b) of this section is not affected by the expansion of a concentrated animal feeding operation, a permit amendment, permit renewal, transfer of ownership or operation of a concentrated animal feeding operation, or by a suspension for not

more than five years of operations at a concentrated animal feeding operation.

(d) Subsections (b) and (c) of this section do not restrict the application of commission rules that regulate concentrated animal feeding operations for the purpose of protecting water quality and that are not in conflict with those subsections.

(e) As used in this section:

(1) "Concentrated animal feeding operation" means a concentrated, confined livestock or poultry facility that is operated for meat, milk, or egg production or for growing, stabling, or housing livestock or poultry in pens or houses, in which livestock or poultry are fed at the place of confinement and crop or forage growth or feed is not produced in the confinement area.

(2) "Playa" means a flat-floored, clayey bottom of an undrained basin that is located in an arid or semi-arid part of the state, is naturally dry most of the year, and collects runoff from rain but is subject to rapid evaporation.

Added by Acts 1993, 73rd Leg., ch. 1040, Sec. 1, eff. Sept. 1, 1993.

Sec. 26.049. SANITARY SEWER OVERFLOWS. (a) The commission may not adopt a rule governing sanitary sewer overflows, issue a permit regarding sanitary sewer overflows, or initiate any enforcement action related to a sanitary sewer overflow or a threatened overflow that:

(1) is stricter than the national policy for sewer overflows; or

(2) seeks compliance in a manner that exceeds the minimum requirements of that policy.

(b) If the commission adopts a rule governing sanitary sewer overflows, the commission shall:

(1) employ the maximum flexibility allowed under the national policy for sewer overflows;

(2) allow alternative strategies for the control of sanitary sewer overflows;

(3) consider the financial conditions and constraints of local governments that own separate sanitary sewer systems; and

(4) allow local governments that own separate sanitary sewer systems sufficient time to design and develop cost-effective

methods for controlling sanitary sewer overflows before the commission begins an enforcement action to control sanitary sewer overflows.

(c) Until a national policy for separate sanitary sewer system overflows is finally adopted and if the commission adopts a rule governing sewer overflows, the commission may use the national combined sewer overflow policy as the basis for working with local governments to develop cost-effective programs to control sewer overflows. Implementation schedules developed may be based on the national combined sewer overflow policy.

(d) The commission may require a local government that substantially complies with the national policy for sewer overflows to provide additional controls only if the commission documents a water quality problem attributable to the local government that threatens human health, safety, or the environment.

(e) In this section:

(1) "National combined sewer overflow policy" means the Combined Sewer Overflow Control Policy of the United States Environmental Protection Agency dated April 8, 1994, and published April 19, 1994, as amended or superseded.

(2) "National policy for sewer overflows" means the Combined Sewer Overflow Control Policy of the United States Environmental Protection Agency dated April 8, 1994, and published April 19, 1994, as amended or superseded, or another national policy that is finally adopted by the United States Environmental Protection Agency after September 1, 1995, governing separate sanitary sewer system overflows.

(3) "Separate sanitary sewer system" means a wastewater collection system, separate and distinct from a storm sewer system, that conveys domestic, municipal, commercial, or industrial wastewaters to a publicly owned treatment plant.

(4) "Sanitary sewer overflow" means a discharge of wastewater, stormwater that has entered a separate sanitary sewer system, or a combination of wastewater and stormwater from a separate sanitary sewer system at a point or points before the water enters a publicly owned treatment plant.

(f) Notwithstanding any other provision of this section, the commission shall establish criteria for evaluating whether to initiate an enforcement action related to sanitary sewer overflows that occur as the result of a blockage due to grease. The criteria

shall include consideration of whether the discharge:

(1) could reasonably have been prevented;

(2) was minimized; and

(3) was reported and the notice required by Section 26.039(e) was given.

(g) The adoption and enforcement by a separate sanitary sewer system of model standards for grease management recognized by the executive director shall be considered by the commission to be evidence tending to show that reasonable measures have been taken to prevent or minimize sanitary sewer overflows that occur as a result of blockage due to grease.

(h) When a home-rule municipality has a plan to control or minimize sanitary sewer overflows, Section 552.901, Local Government Code, does not limit the power of a home-rule municipality, in exercising its home-rule powers under Section 5, Article XI, Texas Constitution, to maintain, repair, relocate, or replace a water or sanitary sewer lateral or service line on private property without making an assessment against the property or a person.

Added by Acts 1995, 74th Leg., ch. 925, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 1086, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(31), eff. April 1, 2009.

Sec. 26.0491. MODEL STANDARDS TO PREVENT DISCHARGE OF UNTREATED WASTEWATER FROM SANITARY SEWERS. (a) In this section, "separate sanitary sewer system" has the meaning assigned by Section 26.049.

(b) The commission shall adopt model standards for use by an operator of a separate sanitary sewer system that are designed to prevent the discharge of untreated wastewater from a separate sanitary sewer system as a result of blockage due to grease.

(c) The model standards shall include the following elements:

(1) a requirement that grease be completely removed from grease traps on a regular basis;

(2) a minimum schedule for cleaning of grease traps by a grease trap operator that is sufficient to prevent blockages in the collection system resulting from grease;

(3) an opportunity to receive an exception from the cleaning schedule;

(4) a requirement that new commercial and industrial facilities properly install and use grease traps;

(5) a requirement that, at a commercial or industrial facility where a grease trap has previously been installed, a grease trap be properly used;

(6) a requirement that alternative treatment methods be supported by scientific data determined by the commission to show that the method will prevent blockages in the collection system caused by grease and will not affect the performance of the system's treatment plant;

(7) a uniform manifest system; and

(8) a schedule of penalties.

Acts 2003, 78th Leg., ch. 1086, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 22.002, eff. September 1, 2005.

Sec. 26.050. DIGITAL COPIES OF BOUNDARY LINES. The commission shall make available to the public digital copies of the Recharge, Transition, and Contributing Zone boundary lines, when they become available.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 10.02, eff. Sept. 1, 2001.

Sec. 26.052. LIMITED LIABILITY FOR AQUATIC HERBICIDE APPLICATION. (a) In this section, "commercially licensed aquatic herbicide applicator" means a person who holds a commercial applicator license issued by the Department of Agriculture under Chapter 76, Agriculture Code, to apply aquatic herbicides.

(b) Except as provided by Chapter 12, Parks and Wildlife Code, a commercially licensed aquatic herbicide applicator working under contract with a river authority organized pursuant to Section 59, Article XVI, Texas Constitution, is not liable for damages in excess of $2 million for each occurrence of personal injury, property damage, or death resulting directly or indirectly from the

application of aquatic herbicide in compliance with such contract, applicable law, and the license terms or permit.

(c) The control and elimination of noxious weeds, grasses, and vegetation in the rivers, tributaries, impoundments, and reservoirs of the state through the application by river authorities or their agents, employees, or contractors, in compliance with applicable law, licenses, and permits, of aquatic herbicides are essential governmental functions, and except to the extent provided in Chapter 101, Civil Practice and Remedies Code, nothing herein shall be deemed or construed to waive, limit, or restrict the governmental immunity of river authorities in the performance of such governmental functions.

(d) The limited liability provided by this section does not apply to a commercially licensed aquatic herbicide applicator if the applicator uses the wrong aquatic herbicide, fails to follow manufacturers' warnings, instructions, and directions for the application of the aquatic herbicide, fails to follow the directions of the river authority concerning the application of the aquatic herbicide, or applies the aquatic herbicide in a manner that violates federal or state law, rules, or regulations.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 7.01, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 26.050 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(144), eff. Sept. 1, 2003.

Sec. 26.053. DON'T MESS WITH TEXAS WATER PROGRAM. (a) The commission by rule shall establish a program to prevent illegal dumping that affects the surface waters of this state by placing signs on major highway water crossings that notify drivers of a toll-free number to call to report illegal dumping.

(b) The commission shall establish a toll-free number hotline that will forward calls to the appropriate law enforcement agency.

(c) A local government may work with the commission to participate in the program. A local government that participates in the program may contribute to the cost of operating the toll-free number hotline.

(d) The Texas Department of Transportation shall cooperate with the commission in the placement of signs described by Subsection (a).

(e) The Texas Department of Transportation shall post a sign

that complies with program requirements at a major highway water crossing at the time a previously posted sign identifying the crossing or prohibiting dumping at the crossing is scheduled to be replaced.

Added by Acts 2011, 82nd Leg., R.S., Ch. 232 (H.B. 451), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. REGIONAL AND AREA-WIDE SYSTEMS

Sec. 26.081. REGIONAL OR AREA-WIDE SYSTEMS; GENERAL POLICY. (a) The legislature finds and declares that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.

(b) Within any standard metropolitan statistical area in the state, the commission is authorized to implement this policy in the manner and in accordance with the procedure provided in Sections 26.081 through 26.086 of this code.

(c) In those portions of the state which are not within a standard metropolitan statistical area, the commission shall observe this state policy by encouraging interested and affected persons to cooperate in developing and using regional and area-wide systems. The commission may not use the procedure specified in Sections 26.081 through 26.086 of this code in these areas to implement this policy. However, this does not affect or diminish any authority which the commission may otherwise have and exercise under other provisions of this chapter.

(d) The term "standard metropolitan statistical area," as used in this section, means an area consisting of a county or one or more contiguous counties which is officially designated as such by the United States Office of Management and Budget or its successor in this function.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.093, eff. Sept. 1, 1985.

Sec. 26.082. HEARING TO DEFINE AREA OF REGIONAL OR AREA-WIDE SYSTEMS. (a) Whenever it appears to the commission that because of the existing or reasonably foreseeable residential, commercial, industrial, recreational, or other economic development in an area a regional or area-wide waste collection, treatment, or disposal system or systems are necessary to prevent pollution or maintain and enhance the quality of the water in the state, the commission may hold a public hearing in or near the area to determine whether the policy stated in Section 26.081 of this code should be implemented in that area.

(b) Notice of the hearing shall be given to the local governments which in the judgment of the commission may be affected.

(c) If after the hearing the commission finds that a regional or area-wide system or systems are necessary or desirable to prevent pollution or maintain and enhance the quality of the water in the state, the commission may enter an order defining the area in which such a system or systems are necessary or desirable.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.094, eff. Sept. 1, 1985.

Sec. 26.083. HEARING TO DESIGNATE SYSTEMS TO SERVE THE AREA DEFINED; ORDER; ELECTION; ETC. (a) At the hearing held under Section 26.082 of this code or at a subsequent hearing held in or near an area defined under Section 26.082 of this code, the commission may consider whether to designate the person to provide a regional or area-wide system or systems to serve all or part of the waste collection, treatment, or disposal needs of the area defined.

(b) Notice of the hearing shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the commission may be affected.

(c) If after the hearing the commission finds that there is an existing or proposed system or systems then capable or which in the reasonably foreseeable future will be capable of serving the waste collection, treatment, or disposal needs of all or part of the area defined and that the owners or operators of the system or systems are agreeable to providing the services, the commission may enter an

order designating the person to provide the waste collection, treatment, or disposal system or systems to serve all or part of the area defined.

(d) After the commission enters an order under Subsection (c) of this section and if the commission receives a timely and sufficient request for an election as provided in Section 26.087, the commission shall designate a presiding judge for an election, to determine whether the proposed regional or area-wide system or systems operated by the designated regional entity should be created.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.094, eff. Sept. 1, 1985.

Sec. 26.084. ACTIONS AVAILABLE TO COMMISSION AFTER DESIGNATIONS OF SYSTEMS. (a) After the commission has entered an order as authorized in Section 26.083 of this code, the commission may, after public hearing and after giving notice of the hearing to the persons who in the judgment of the commission may be affected, take any one or more of the following actions:

(1) enter an order requiring any person discharging or proposing to discharge waste into or adjacent to the water in the state in an area defined in an order entered under Section 26.082 of this code to use a regional or area-wide system designated under Section 26.083 of this code for the disposal of his waste;

(2) refuse to grant any permits for the discharge of waste or to approve any plans for the construction or material alteration of any sewer system, treatment facility, or disposal system in an area defined in an order entered under Section 26.082 of this code unless the permits or plans comply and are consistent with any orders entered under Sections 26.081 through 26.086 of this code; or

(3) cancel or suspend any permit, or amend any permit in any particular, which authorizes the discharge of waste in an area defined in an order entered under Section 26.082 of this code.

(b) Before exercising the authority granted in this section, the commission shall find affirmatively:

(1) that there is an existing or proposed regional or area-wide system designated under Section 26.083 of this code which is capable or which in the reasonably foreseeable future will be capable

of serving the waste collection, treatment, or disposal needs of the person or persons who are the subject of an action taken by the commission under this section;

(2) that the owner or operator of the designated regional or area-wide system is agreeable to providing the service;

(3) that it is feasible for the service to be provided on the basis of waste collection, treatment, and disposal technology, engineering, financial, and related considerations existing at the time, exclusive of any loss of revenue from any existing or proposed waste collection, treatment, or disposal systems in which the person or persons who are the subject of an action taken under this section have an interest;

(4) that inclusion of the person or persons who are the subject of an action taken by the commission under this section will not suffer undue financial hardship as a result of inclusion in a regional or area-wide system; and

(5) that a majority of the votes cast in any election held under Section 26.087 of this code favor the creation of the regional or area-wide system or systems operated by the designated regional entity.

(c) An action taken by the commission under Section 26.085 of this code, excluding any person or persons from a regional or area-wide system because the person or persons will suffer undue financial hardship as a result of inclusion in the regional or area-wide system, shall be subject to a review at a later time determined by the commission in accordance with the criteria set out in this section, not to exceed three years from the date of exclusion.

(d) If a person or persons excluded from a regional or area-wide system fail to operate the excluded facilities in a manner that will comply with its permits, the permits shall be subject to cancellation after review by the commission, and the facilities may become a part of the regional or area-wide system.

Amended by Acts 1977, 65th Leg., p. 255, ch. 121, Sec. 2, eff. Aug. 29, 1977. Renumbered from Sec. 21.204 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.095, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 26, eff. June 19, 1987.

Sec. 26.085. INCLUSION AT A LATER TIME. Any person or persons who are the subject of an action taken by the commission under Section 26.084 of this code and who are excluded from a regional or area-wide system because the person or persons will suffer undue financial hardship as a result of inclusion in the regional or area-wide system may be added to the system at a later time under the provisions of Section 26.084 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 26.086. RATES FOR SERVICES BY DESIGNATED SYSTEMS. (a) On motion of any interested party and after a public hearing, the commission may set reasonable rates for the furnishing of waste collection, treatment, or disposal services to any person by a regional or area-wide system designated under Section 26.083 of this code.

(b) Notice of the hearing shall be given to the owner or operator of the designated regional or area-wide system, the person requesting the hearing, and any other person who in the judgment of the commission may be affected by the action taken by the commission as a result of the hearing.

(c) After the hearing, the commission shall enter an order setting forth its findings and the rates which may be charged for the services by the owner or operator of the designated regional or area-wide system.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 26.087. ELECTION FOR APPROVAL OF REGIONAL OR AREA-WIDE SYSTEM OR SYSTEMS. (a) After the commission under Sections 26.082 and 26.083 of this code, enters an order: defining an area for a regional or area-wide system or systems; designating a regional entity to operate the regional or area-wide system or systems; and appointing a presiding judge for the election, an election shall be held within the boundaries of the proposed regional or area-wide system or systems to be operated by the designated regional entity upon the filing of a timely and sufficient request for an election

except as provided in Subsection (i) of this section.

(b) Any person located within the boundaries of the proposed regional or area-wide system or systems requesting an election for the approval of the proposed regional or area-wide system or systems to be operated by the designated regional entity shall file a written request with the commission within 30 days of the date the commission enters an order under Section 26.083 of this code. The request shall include a petition signed by 50 persons holding title to the land within the proposed regional or area-wide system or systems, as indicated by the county tax rolls.

(c) Notice of the election shall state the day and place or places for holding the election, and the proposition to be voted on. The notice shall be published once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which the regional or area-wide system or systems is to be located. The first publication of the notice shall be at least 14 days before the day set for the election. Notice of the election shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the commission may be affected.

(d) Absentee balloting in the election shall begin 10 days before the election and shall end as provided in the Texas Election Code. The ballots for the election shall be printed to provide for voting for or against the regional or area-wide system to be operated by the designated regional entity.

(e) Immediately after the election, the presiding judge shall make returns of the result to the executive director. The executive director shall canvass the returns and report to the commission his findings of the results at the earliest possible time.

(f) If a majority of the votes cast in the election favor the creation of the regional or area-wide system or systems operated by the designated regional entity, then the commission shall declare the regional system is created and enter the results in its minutes. If a majority of the votes cast in the election are against the creation of the regional or area-wide system or systems operated by the designated regional entity, then the commission shall declare that the regional system was defeated and enter the result in its minutes.

(g) The order canvassing the results of the confirmation election shall contain a description of the regional system's boundaries and shall be filed in the deed records of the county or

counties in which the regional system is located.

(h) The legislature, through the General Appropriations Act, may provide funds for the conduct of elections required under this section. If no funds are appropriated for this purpose, the costs of conducting the election shall be assessed by the commission.

(i) This subsection applies to regional or area-wide system or systems and regional entities which have been designated prior to the effective date of this Act. An election to approve creation of a regional or area-wide system or systems and the designation of a regional entity to operate those systems as provided in this section shall not be required for those regional systems or entities to which this subsection applies.

Added by Acts 1977, 65th Leg., p. 256, ch. 121, Sec. 3, eff. Aug. 29, 1977. Renumbered from Sec. 21.206 and amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.096, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 27, eff. June 19, 1987.

SUBCHAPTER D. PROHIBITION AGAINST POLLUTION; ENFORCEMENT

Sec. 26.121. UNAUTHORIZED DISCHARGES PROHIBITED. (a) Except as authorized by the commission, no person may:

(1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;

(2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the discharge complies with a person's:

(A) certified water quality management plan approved by the State Soil and Water Conservation Board as provided by Section 201.026, Agriculture Code; or

(B) water pollution and abatement plan approved by the commission; or

(3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land

Office, the Department of Agriculture, or the Railroad Commission of Texas, in which case this subdivision does not apply.

(b) In the enforcement of Subdivisions (2) and (3) of Subsection (a) of this section, consideration shall be given to the state of existing technology, economic feasibility, and the water quality needs of the water that might be affected. This subdivision does not apply to any NPDES activity.

(c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any permit or order of the commission.

(d) Except as authorized by the commission, no person may discharge any pollutant, sewage, municipal waste, recreational waste, agricultural waste, or industrial waste from any point source into any water in the state.

(e) No person may cause, suffer, allow, or permit the discharge from a point source of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter or of any rule, regulation, permit, or other order of the commission.

Amended by Acts 1977, 65th Leg., p. 1643, ch. 644, Sec. 2. Renumbered from Sec. 21.251 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.098, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 642, Sec. 4, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 54, Sec. 4, eff. April 29, 1993; Acts 1997, 75th Leg., ch. 1010, Sec. 4.44, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 8, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 10, eff. June 18, 1999.

Text of section effective upon delegation of NPDES permit authority

Sec. 26.1211. PRETREATMENT EFFLUENT STANDARDS.

(a) The commission is authorized to administer a program for the regulation of pretreatment of pollutants which are introduced into publicly owned treatment works.

(b) The commission is authorized to adopt regulations for the administration of this program consistent with 33 U.S.C. Section 1317 and rules adopted thereunder by the Environmental Protection Agency.

Added by Acts 1989, 71st Leg., ch. 642, Sec. 5, eff. Aug. 28, 1989.

Sec. 26.127. COMMISSION AS PRINCIPAL AUTHORITY. (a) The commission is the principal authority in the state on matters relating to the quality of the water in the state. The executive director has the responsibility for establishing a water quality sampling and monitoring program for the state. All other state agencies engaged in water quality or water pollution control activities shall coordinate those activities with the commission.

(b) The executive director may, on behalf of and with the consent of the commission, enter into contracts or other agreements with the Department of Agriculture for purposes of obtaining laboratory services for water quality testing.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.102, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 456, Sec. 9, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 11, eff. June 18, 1999.

Sec. 26.128. GROUNDWATER QUALITY. The executive director shall have investigated all matters concerning the quality of groundwater in the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 26.129. DUTY OF PARKS AND WILDLIFE DEPARTMENT. The Parks and Wildlife Department and its authorized employees shall enforce the provisions of this chapter to the extent that any violation affects aquatic life and wildlife as provided in Section 7.109.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 26.003, eff. September 1, 2011.

Sec. 26.130. DUTY OF DEPARTMENT OF HEALTH. The Texas Department of Health shall continue to apply the authority vested in it by Chapter 341, Health and Safety Code, in the abatement of nuisances resulting from pollution not otherwise covered by this chapter. The Texas Department of Health shall investigate and make recommendations to the commission concerning the health aspects of matters related to the quality of the water in the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.102, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 14, Sec. 284(70), eff. Sept. 1, 1991.

Text of section effective until delegation of RCRA authority to Railroad Commission of Texas

Sec. 26.131. DUTIES OF RAILROAD COMMISSION. (a) Except as provided by this section, the Railroad Commission of Texas is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from:

(1) activities associated with the exploration, development, and production of oil or gas or geothermal resources, 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 Railroad Commission of Texas;

(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;

(2) except to the extent the activities are regulated by the Texas Department of Health under Chapter 401, Health and Safety Code, activities associated with uranium exploration consisting of the disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of uranium ore; and

(3) any other activities regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code.

(b) Except as provided by Subsection (d), the Railroad Commission of Texas may issue permits for the discharge of waste resulting from the activities described by Subsection (a), and the discharge of waste into water in this state resulting from those activities must meet the water quality standards established by the commission.

(c) The term "waste" as used in this section does not include any waste that results from 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.

(d) The commission may issue permits for the discharge into water in this state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described by Subsection (a) on delegation to the commission of NPDES authority for those discharges. The discharge of produced water, hydrostatic test water, and gas plant effluent into water in this state under this subsection must meet the water quality standards established by the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 395, ch. 185, Sec. 3, eff. Aug.

27, 1979; Acts 1981, 67th Leg., p. 413, ch. 171, Sec. 2, eff. May 20, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.103, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 921, Sec. 1, eff. June 15, 1985; Acts 1991, 72nd Leg., ch. 14, Sec. 284(89), eff. Sept. 1, 1991.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1140 (H.B. 2771), Sec. 1, eff. September 1, 2019.

Text of section effective upon delegation of RCRA authority to Railroad Commission of Texas

Sec. 26.131. DUTIES OF RAILROAD COMMISSION. (a) Except as provided by this section, the Railroad Commission of Texas is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from:

(1) activities associated with the exploration, development, and production of oil or gas or geothermal resources, 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 Railroad Commission of Texas;

(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;

(2) except to the extent the activities are regulated by the Texas Department of Health under Chapter 401, Health and Safety Code, activities associated with uranium exploration consisting of the disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of uranium ore; and

(3) any other activities regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code.

(b) Except as provided by Subsection (c), the Railroad Commission of Texas may issue permits for the discharge of waste resulting from the activities described by Subsection (a), and the discharge of waste into water in this state resulting from those activities must meet the water quality standards established by the commission.

(c) The commission may issue permits for the discharge into water in this state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described by Subsection (a) on delegation to the commission of NPDES authority for those discharges. The discharge of produced water, hydrostatic test water, and gas plant effluent into water in this state under this subsection must meet the water quality standards established by the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 395, ch. 185, Sec. 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 413, ch. 171, Sec. 2, eff. May 20, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.103, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 921, Sec. 1, eff. June 15, 1985; Acts 1991, 72nd Leg., ch. 14, Sec. 284(89), eff. Sept. 1, 1991.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1140 (H.B. 2771), Sec. 2, eff. September 1, 2019.

Sec. 26.1311. DUTY OF STATE SOIL AND WATER CONSERVATION BOARD. The State Soil and Water Conservation Board and its authorized agents are responsible for the abatement and prevention of pollution resulting from agricultural or silvicultural nonpoint source

pollution as provided by Section 201.026, Agriculture Code.

Added by Acts 1993, 73rd Leg., ch. 54, Sec. 5, eff. April 29, 1993.

Sec. 26.132. EVAPORATION PITS REQUIREMENTS. (a) In this section, "evaporation pit" means a pit into which water, including rainwater or storm water runoff, is or has been placed and retained for the purpose of collecting, after the water's evaporation, brine water or residual minerals, salts, or other substances present in the water, and for the purpose of storing brine water and minerals.

(b) This section applies only to evaporation pits:

(1) operated for the commercial production of brine water, minerals, salts, or other substances that naturally occur in groundwater; and

(2) that are not regulated by the Railroad Commission of Texas.

(c) The owner or operator of an evaporation pit shall ensure that the pit is lined as provided by this subsection and rules adopted under this subsection. An evaporation pit must have a liner designed by an engineer who holds a license issued under Chapter 1001, Occupations Code, to minimize surface water and groundwater pollution risks. The liner must meet standards at least as stringent as those adopted by the commission for a Type I landfill managing Class I industrial solid waste.

(d) An owner or operator may not place or permit the placement of groundwater or on-site storm water runoff into an evaporation pit if the pit does not comply with this section or with rules adopted or orders issued under this section.

(e) The owner or operator of an evaporation pit shall ensure that:

(1) storm water runoff is diverted away from or otherwise prevented from entering the evaporation pit; and

(2) all berms and other structures used to manage storm water are properly constructed and maintained in a manner to prevent the threat of water pollution from the evaporation pit.

(f) The owner or operator of an evaporation pit may not by act or omission cause:

(1) water pollution from the evaporation pit; or

(2) a discharge from the evaporation pit into or adjacent

to water in the state.

(g) The owner or operator of an evaporation pit shall ensure that the pit is located so that a failure of the pit or a discharge from the pit does not result in an adverse effect on water in the state.

(h) The owner or operator of an evaporation pit shall provide the commission with proof that the owner or operator has financial assurance adequate to ensure satisfactory closure of the pit.

(i) The owner or operator of an evaporation pit shall provide the commission with proof that the owner or operator of the pit has a third party pollution liability insurance policy that:

(1) is issued by an insurance company authorized to do business in this state that has a rating by the A. M. Best Company of "A-" or better;

(2) covers bodily injury and property damage to third parties caused by accidental sudden or nonsudden occurrences arising from operations at the pit; and

(3) is in an amount of not less than $3 million.

(j) The commission shall adopt rules as necessary to protect surface water and groundwater quality from the risks presented by commercial evaporation pits and as necessary to administer and enforce this section, including rules:

(1) governing the location, design, construction, capacity, operations, maintenance, and closure of evaporation pits;

(2) ensuring that the owner or operator of an evaporation pit has adequate financial assurance; and

(3) requiring an owner or operator of an evaporation pit to obtain a permit from the commission for the operation of the pit.

(k) The commission shall impose against the owners of evaporation pits fees in amounts necessary to recover the costs of administering this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 536 (S.B. 1037), Sec. 1, eff. September 1, 2007.

Sec. 26.135. EFFECT ON OTHER LAWS. (a) Nothing in this chapter affects the powers and duties of the commission and the Railroad Commission of Texas with respect to injection wells as provided in Chapter 27 of this code.

(b) The commission shall continue to exercise the authority granted to it in Chapter 1901, Occupations Code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.103, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 11.294, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.847, eff. Sept. 1, 2003.

Sec. 26.137. COMMENT PERIOD FOR EDWARDS AQUIFER PROTECTION PLANS. The commission shall provide for a 30-day comment period in the review process for Edwards Aquifer Protection Plans in the Contributing Zone of the Edwards Aquifer as provided in 30 T.A.C. Section 213.4(a)(2).

Added by Acts 2001, 77th Leg., ch. 965, Sec. 10.04, eff. Sept. 1, 2001.

SUBCHAPTER E. AUTHORITY OF LOCAL GOVERNMENTS

Sec. 26.171. INSPECTION OF PUBLIC WATER. A local government may inspect the public water in its area and determine whether or not:

(1) the quality of the water meets the state water quality standards adopted by the commission;

(2) persons discharging effluent into the public water located in the areas of which the local government has jurisdiction have obtained permits for discharge of the effluent; and

(3) persons who have permits are making discharges in compliance with the requirements of the permits.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.103, eff. Sept. 1, 1985.

Sec. 26.172. RECOMMENDATIONS TO COMMISSION. A local government may make written recommendations to the commission as to what in its judgment the water quality standards should be for any public water within its territorial jurisdiction.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.103, eff. Sept. 1, 1985.

Sec. 26.173. POWER TO ENTER PROPERTY. (a) A local government has the same power as the commission has under Section 26.014 of this code to enter public and private property within its territorial jurisdiction to make inspections and investigations of conditions relating to water quality. The local government in exercising this power is subject to the same provisions and restrictions as the commission.

(b) When requested by the executive director, the result of any inspection or investigation made by the local government shall be transmitted to the commission for its consideration.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.103, eff. Sept. 1, 1985.

Sec. 26.175. COOPERATIVE AGREEMENTS. (a) A local government may execute cooperative agreements with the commission or other local governments:

(1) to provide for the performance of water quality management, inspection, and enforcement functions and to provide technical aid and educational services to any party to the agreement; and

(2) for the transfer of money or property from any party to the agreement to another party to the agreement for the purpose of water quality management, inspection, enforcement, technical aid and education, and the construction, ownership, purchase, maintenance, and operation of disposal systems.

(b) When in the opinion of the executive director it would facilitate and enhance the performance by a local government of its water quality management, inspection, and enforcement functions pursuant to a cooperative agreement between the local government and the commission as authorized in Subsection (a) of this section, the executive director may assign and delegate to the local government during the period of the agreement such of the pertinent powers and

functions vested in the commission under this chapter as in the judgment of the executive director may be necessary or helpful to the local government in performing those management, inspection, and enforcement functions.

(c) At any time and from time to time prior to the termination of the cooperative agreement, the executive director may modify or rescind any such assignment or delegation.

(d) The executive director shall notify immediately a local government to whom it assigns or delegates any powers and functions pursuant to Subsections (b) and (c) of this section or as to when it modifies or rescinds any such assignment or delegation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.104, eff. Sept. 1, 1985.

Sec. 26.176. DISPOSAL SYSTEM RULES. (a) Every local government which owns or operates a disposal system is empowered to and shall, except as authorized in Subsection (c) of this section, enact and enforce rules, ordinances, orders, or resolutions, referred to in this section as rules, to control and regulate the type, character, and quality of waste which may be discharged to the disposal system and, where necessary, to require pretreatment of waste to be discharged to the system, so as to protect the health and safety of personnel maintaining and operating the disposal system and to prevent unreasonable adverse effects on the disposal system.

(b) The local government in its rules may establish the charges and assessments which may be made to and collected from all persons who discharge waste to the disposal system or who have conduits or other facilities for discharging waste connected to the disposal system, referred to in this subsection as "users." The charges and assessments shall be equitable as between all users and shall correspond as near as can be practically determined to the cost of making the waste disposal services available to all users and of treating the waste of each user or class of users. The charges and assessments may include user charges, connection fees, or any other methods of obtaining revenue from the disposal system available to the local government. In establishing the charges and assessments, the local government shall take into account:

(1) the volume, type, character, and quality of the waste of each user or class of users;

(2) the techniques of treatment required;

(3) any capital costs and debt retirement expenses of the disposal system required to be paid for from the charges and assessments;

(4) the costs of operating and maintaining the system to comply with this chapter and the permits, rules, and orders of the commission; and

(5) any other costs directly attributable to providing the waste disposal service under standard, accepted cost-accounting practices.

(c) A local government may apply to the commission for an exception from the requirements of Subsections (a) and (b) of this section or for a modification of those requirements. The application shall contain the exception or modifications desired, the reasons the exception or modifications are needed, and the grounds authorized in this subsection on which the commission should grant the application. A public hearing on the application shall be held in or near the territorial area of the local government, and notice of the hearing shall be given to the local government. If after the hearing the commission in its judgment determines that the volume, type, character, and quality of the waste of the users of the system or of a particular user or class of users of the system do not warrant the enactment and enforcement of rules containing the requirements prescribed in Subsections (a) and (b) of this section or that the enactment and enforcement of the rules would be impractical or unreasonably burdensome on the local government in relation to the public benefit to be derived, then the commission in its discretion may enter an order granting an exception to those requirements or modifying those requirements in any particular in response to circumstances shown to exist.

(d) At any time and from time to time as circumstances may require, the commission may amend or revoke any order it enters pursuant to Subsection (c) of this section. Before the commission amends or revokes such an order, a public hearing shall be held in or near the territorial area of the local government in question, and notice of the hearing shall be given to the local government. If after the hearing the commission in its judgment determines that the circumstances on which it based the order have changed significantly

or no longer exist, the commission may revoke the order or amend it in any particular in response to the circumstances then shown to exist.

(e) In the event of any conflict between the provisions of this section and any other laws or parts of laws, the provisions of this section shall control.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.105, eff. Sept. 1, 1985.

Sec. 26.177. WATER POLLUTION CONTROL DUTIES OF CITIES. (a) A city may establish a water pollution control and abatement program for the city. If the watershed water quality assessment reports required by Section 26.0135 or other commission assessments or studies identify water pollution that is attributable to non-permitted sources in a city that has a population of 10,000 or more, the commission, after providing the city a reasonable time to correct the problem and after holding a public hearing, may require the city to establish a water pollution control and abatement program. The city shall employ or retain an adequate number of personnel on either a part-time or full-time basis as the needs and circumstances of the city may require, who by virtue of their training or experience are qualified to perform the water pollution control and abatement functions required to enable the city to carry out its duties and responsibilities under this section.

(b) The water pollution control and abatement program of a city shall encompass the entire city and, subject to Section 26.179 of this code, may include areas within its extraterritorial jurisdiction which in the judgment of the city should be included to enable the city to achieve the objectives of the city for the area within its territorial jurisdiction. The city shall include in the program the services and functions which, in the judgment of the city or as may be reasonably required by the commission, will provide effective water pollution control and abatement for the city, including the following services and functions:

(1) the development and maintenance of an inventory of all significant waste discharges into or adjacent to the water within the city and, where the city so elects, within the extraterritorial

jurisdiction of the city, without regard to whether or not the discharges are authorized by the commission;

(2) the regular monitoring of all significant waste discharges included in the inventory prepared pursuant to Subdivision (1) of this subsection;

(3) the collecting of samples and the conducting of periodic inspections and tests of the waste discharges being monitored to determine whether the discharges are being conducted in compliance with this chapter and any applicable permits, orders, or rules of the commission, and whether they should be covered by a permit from the commission;

(4) in cooperation with the commission, a procedure for obtaining compliance by the waste dischargers being monitored, including where necessary the use of legal enforcement proceedings;

(5) the development and execution of reasonable and realistic plans for controlling and abating pollution or potential pollution resulting from generalized discharges of waste which are not traceable to a specific source, such as storm sewer discharges and urban runoff from rainwater; and

(6) any additional services, functions, or other requirements as may be prescribed by commission rule.

(c) The water pollution control and abatement program required by Subsections (a) and (b) of this section must be submitted to the commission for review and approval. The commission may adopt rules providing the criteria for the establishment of those programs and the review and approval of those programs.

(d) Any person affected by any ruling, order, decision, ordinance, program, resolution, or other act of a city relating to water pollution control and abatement outside the corporate limits of such city adopted pursuant to this section or any other statutory authorization may appeal such action to the commission or district court. An appeal must be filed with the commission within 60 days of the enactment of the ruling, order, decision, ordinance, program, resolution, or act of the city. The issue on appeal is whether the action or program is invalid, arbitrary, unreasonable, inefficient, or ineffective in its attempt to control water quality. The commission or district court may overturn or modify the action of the city. If an appeal is taken from a commission ruling, the commission ruling shall be in effect for all purposes until final disposition is made by a court of competent jurisdiction so as not to delay any

permit approvals.

(e) The commission may adopt and assess reasonable and necessary fees adequate to recover the costs of the commission in administering this section.

(f) A city may contract with a river authority or another political subdivision to perform any or all services and functions that are part of a water pollution control and abatement program established under this section.

(g) The commission may assist cities in identifying and obtaining funds and technical assistance that may be available to assist a city, or a river authority or other political subdivision with whom a city has contracted, in performing any or all of the services or functions that are part of a water pollution control and abatement program established under this section.

(h) Property subject to a permit or plat in the extraterritorial jurisdiction of a municipality may not be subjected to new or additional water pollution regulations if the property is transferred to another municipality's extraterritorial jurisdiction, and all provisions of Chapter 245, Local Government Code, shall apply to the property. If the release of extraterritorial jurisdiction for the purpose of transferring it to another municipality results in property not being subject to any municipality's water pollution regulations on the date of release, the releasing municipality retains its jurisdiction to enforce its water pollution regulations until the property is included in the extraterritorial jurisdiction of the receiving municipality.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.106, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 983, Sec. 1, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 411, Sec. 1, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 975, Sec. 2, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 101, Sec. 5, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 11.01, eff. Sept. 1, 2001.

Sec. 26.178. FINANCIAL ASSISTANCE DEPENDENT ON WATER QUALITY PROGRAMS. All financial assistance from the board to a city having a population of 5,000 or more inhabitants shall be conditioned on the city submitting to the commission for review and in accordance with

rules and submission schedules promulgated by the commission a water pollution control and abatement program as required by Section 26.177 of this code. The board may award grants from the research and planning fund of the water assistance fund to river authorities seeking such funds for purposes of performing regional water quality assessments described in Section 26.0135 of this code.

Added by Acts 1991, 72nd Leg., ch. 294, Sec. 5, eff. June 7, 1991.

Sec. 26.179. DESIGNATION OF WATER QUALITY PROTECTION ZONES IN CERTAIN AREAS. (a) In this section, "water quality protection" may be achieved by:

(1) maintaining background levels of water quality in waterways; or

(2) capturing and retaining the first 1.5 inches of rainfall from developed areas.

(b) For the purpose of Subsection (a)(1), "maintaining background levels of water quality in waterways" means maintaining background levels of water quality in waterways comparable to those levels which existed prior to new development as measured by the following constituents: total suspended solids, total phosphorus, total nitrogen, and chemical and biochemical oxygen demand. Background levels shall be established either from sufficient data collected from water quality monitoring at one or more sites located within the area designated as a water quality protection zone or, if such data are unavailable, from calculations performed and certified by a registered professional engineer utilizing the concepts and data from the National Urban Runoff Program (NURP) Study or other studies approved by the Texas Natural Resource Conservation Commission (commission) for the constituents resulting from average annual runoff, until such data collected at the site are available. Background levels for undeveloped sites shall be verified based on monitoring results from other areas of property within the zone prior to its development. The monitoring shall consist of a minimum of one stage (flow) composite sample for at least four storm events of one-half inch or more of rainfall that occur at least one month apart. Monitoring of the four constituents shall be determined by monitoring at four or more locations where runoff occurs. A minimum of four sample events per year for each location for rainfall events greater

than one-half inch shall be taken. Monitoring shall occur for three consecutive years after each phase of development occurs within the Water Quality Protection Zone. Each new phase of development, including associated best management practices, will require monitoring for a three-year period. The results of the monitoring and a description of the best management practices being used throughout the zone shall be summarized in a technical report and submitted to the commission no later than April 1 of each calendar year during development of the property, although the commission may determine that monitoring is no longer required. The commission shall review the technical report. If the performance monitoring and best management practices indicate that background levels were not maintained during the previous year, the owner or developer of land within the water quality protection zone shall:

(1) modify water quality plans developed under this section for future phases of development in the water quality protection zone to the extent reasonably feasible and practical; and

(2) modify operational and maintenance practices in existing phases of the water quality protection zone to the extent reasonably feasible and practical.

Water quality monitoring shall not be required in areas using the methodology described by Subsection (a)(2).

(c) This section applies only to those areas within the extraterritorial jurisdiction, outside the full-purpose corporate limits of a municipality with a population greater than 10,000, and in which the municipality either:

(1) has enacted or attempted to enforce three or more ordinances or amendments thereto attempting to regulate water quality or control or abate water pollution in the area within the five years preceding the effective date of this Act, whether or not such ordinances or amendments were legally effective upon the area; or

(2) enacts or attempts to enforce three or more ordinances or amendments thereto attempting to regulate water quality or control or abate water pollution in the area in any five-year period, whether or not such ordinances or amendments are legally effective upon the area.

(d) The owner or owners of a contiguous tract of land in excess of 1,000 acres that is located within an area subject to this section may designate the tract as a "water quality protection zone." Upon prior approval of the Commission, the owner of a contiguous tract of

land containing less than 1,000 acres, but not less than 500 acres, that is located within an area subject to this section may also designate the tract as a "water quality protection zone." The tract shall be deemed contiguous if all of its parts are physically adjacent, without regard to easements, rights-of-way, roads, streambeds, and public or quasi-public land, or it is part of an integrated development under common ownership or control. The purpose of a water quality protection zone is to provide for the consistent protection of water quality in the zone without imposing undue regulatory uncertainty on owners of land in the zone.

(e) A water quality protection zone designated under this section shall be described by metes and bounds or other adequate legal description. The designation shall include a general description of the proposed land uses within the zone, a water quality plan for the zone, and a general description of the water quality facilities and infrastructure to be constructed for water quality protection in the zone.

(f) Creation of a water quality protection zone shall become immediately effective upon recordation of the designation in the deed records of the county in which the land is located. The designation shall be signed by the owner or owners of the land, and notice of such filing shall be given to the city clerk of the municipality within whose extraterritorial jurisdiction the zone is located and the clerk of the county in which the property is located.

(g) A water quality protection zone designation may be amended and a designation may specify the party or parties authorized to execute amendments to the zone designation and the zone's water quality plan. Land may be added to or excluded from a zone by amending the zone designation. An amendment to a zone designation adding land to or excluding land from a zone must describe the boundaries of the zone as enlarged or reduced by metes and bounds or other adequate legal description. An amendment to a zone designation is effective on its filing in the deed records of the county in which the land is located. On application by all owners of land in a zone, or by each party authorized by the zone designation or an amendment to the zone designation to amend the zone designation, the commission may terminate a zone on reasonable terms and conditions specified by the commission.

(h) The water quality plan for a zone, including the determination of background levels of water quality, shall be signed

and sealed by a registered professional engineer acknowledging that the plan is designed to achieve the water quality protection standard defined in this section. On recordation in the deed records, the water quality plan shall be submitted to and accepted by the commission for approval, and the commission shall accept and approve the plan unless the commission finds that implementation of the plan will not reasonably attain the water quality protection as defined in this section. A water quality plan may be amended from time to time on filing with the commission, and all such amendments shall be accepted by the commission unless there is a finding that the amendment will impair the attainment of water quality protection as defined in this section. The commission shall adopt and assess reasonable and necessary fees adequate to recover the costs of the commission in administering this section. The commission's review and approval of a water quality plan shall be performed by the commission staff that is responsible for reviewing pollution abatement plans in the county where the zone is located. The review and approval of the plan or any amendment to the plan shall be completed within 120 days of the date it is filed with the commission. A public hearing on the plan shall not be required, and acceptance, review, and approval of the water quality plan or water quality protection zone shall not be delayed pending the adoption of rules. The commission shall have the burden of proof for the denial of a plan or amendments to a plan, and any such denial shall be appealable to a court of competent jurisdiction. The water quality plan, or any amendment thereto, shall be effective upon recordation of the plan or the amendment in the deed records and shall apply during the period of review and approval by the commission or appeal of the denial of the plan or any amendment. New development under a plan may not proceed until the plan or amendment to the plan, as appropriate, has been approved by the commission.

(i) The water quality plan for a zone shall be a covenant running with the land.

(j) A municipality may not enforce in a zone any of its ordinances, land use ordinances, rules, or requirements including, but not limited to, the abatement of nuisances, pollution control and abatement programs or regulations, water quality ordinances, subdivision requirements, other than technical review and inspections for utilities connecting to a municipally owned water or wastewater system, or any environmental regulations which are inconsistent with

the land use plan and the water quality plan or which in any way limit, modify, or impair the ability to implement and operate the water quality plan and the land use plan within the zone as filed; nor shall a municipality collect fees or assessments or exercise powers of eminent domain within a zone until the zone has been annexed for the municipality. A water quality protection zone may be annexed by a municipality only after the installation and completion of 90 percent of all facilities and infrastructure described in the water quality plan for the entire zone as being necessary to carry out such plan or the expiration of 20 years from the date of designation of the zone, whichever occurs first.

(k) Subdivision plats within a water quality protection zone shall be approved by the municipality in whose extraterritorial jurisdiction the zone is located and the commissioners court of the county in which the zone is located if:

(1) the plat complies with the subdivision design regulations of the county; and

(2) the plat is acknowledged by a registered professional engineer stating that the plat is in compliance with the water quality plan within the water quality protection zone.

(l) A water quality protection zone implementing a water quality plan which meets the requirements of this section shall be presumed to satisfy all other state and local requirements for the protection of water quality; provided, however, that:

(1) development in the zone shall comply with all state laws and commission rules regulating water quality which are in effect on the date the zoning is designated; and

(2) nothing in this section shall supersede or interfere with the applicability of water quality measures or regulations adopted by a conservation and reclamation district comprising more than two counties and which apply to the watershed area of a surface lake or surface reservoir that impounds at least 4,000 acre-feet of water.

(m)(1) One or more of the provisions of this section may be waived by the owner or owners of property that is or becomes subject to an agreement entered into after the effective date of this Act between the owner or owners of land within the zone and the municipality. The agreement shall be in writing, and the parties may agree:

(A) to guarantee continuation of the extraterritorial

status of the zone and its immunity from annexation by the municipality for a period not to exceed 15 years after the effective date of the agreement;

(B) to authorize certain land uses and development within the zone;

(C) to authorize enforcement by the municipality of certain municipal land use and development regulations within the zone, in the same manner such regulations are enforced within the municipality's boundaries, as may be agreed by the landowner and the municipality;

(D) to vary any watershed protection regulations;

(E) to authorize or restrict the creation of political subdivisions within the zone; and

(F) to such other terms and considerations the parties consider appropriate, including, but not limited to, the continuation of land uses and zoning after annexation of the zone, the provision of water and wastewater service to the property within the zone, and the waiver or conditional waiver of provisions of this section.

(2) An agreement under this section shall meet the requirements of and have the same force and effect as an agreement entered into pursuant to Section 42.046, Local Government Code.

(n) In addition to the requirements of Subsections (a)(1) and (a)(2), the commission may require and enforce additional water quality protection measures to comply with mandatory federal water quality requirements, standards, permit provisions, or regulations.

(o) This section does not apply to an area within the extraterritorial jurisdiction of a municipality with a population greater than 900,000 that has extended to the extraterritorial jurisdiction of the municipality an ordinance whose purpose is to prevent the pollution of an aquifer which is the sole or principal drinking water source for the municipality.

(p) If a municipality's action results in part of a zone being located outside the municipality's extraterritorial jurisdiction, the entire zone is removed from the municipality's extraterritorial jurisdiction. A zone removed from a municipality's extraterritorial jurisdiction may not be brought into the municipality's extraterritorial jurisdiction before the 20th anniversary of the date on which the zone was designated.

(q) In addition to the fees authorized under Subsection (h), the commission shall adopt and assess reasonable and necessary fees

adequate to recover the commission's costs in monitoring water quality associated with water quality protection zones.

Added by Acts 1995, 74th Leg., ch. 975, Sec. 1, eff. June 16, 1995. Amended by Acts 1997, 74th Leg., ch. 21, Sec. 1, eff. April 25, 1997; Acts 1999, 76th Leg., ch. 225, Sec. 1, eff. May 24, 1999; Acts 1999, 76th Leg., ch. 1543, Sec. 1, eff. June 19, 1999.

Sec. 26.180. NONPOINT SOURCE WATER POLLUTION CONTROL PROGRAMS OF CERTAIN MUNICIPALITIES. (a) This section applies to a municipality to which Section 42.903, Local Government Code, applies.

(b) The municipality shall exercise the powers granted under state law to a municipality to adopt ordinances to control and abate nonpoint source water pollution or to protect threatened or endangered species.

(c) The municipality by ordinance shall adopt a nonpoint source water pollution control and abatement program for the municipality and its extraterritorial jurisdiction before the municipality adopts a resolution or ordinance creating an extraterritorial jurisdiction under Section 42.903, Local Government Code. The municipality shall submit the ordinance creating the program to the commission. Notwithstanding any other law requiring the adoption of an ordinance creating an extraterritorial jurisdiction and approval by the commission, the ordinance creating the program becomes effective and is enforceable by the municipality on the 90th day after the date the municipality submits the ordinance unless the ordinance is disapproved by the commission during the 90-day period.

(d) If the commission disapproves a program submitted under Subsection (c) of this section, the commission shall make recommendations to the municipality. The municipality shall adopt and incorporate the commission's recommendations in the program.

(e) The nonpoint source water pollution controls of the municipality that had extraterritorial jurisdiction over an area before the area was included in the extraterritorial jurisdiction of another municipality under Section 42.903, Local Government Code, are effective during the 90-day period that the program is pending before the commission or until an amended program satisfactory to the commission is adopted. The municipality, including the area in its extraterritorial jurisdiction under Section 42.903, Local Government

Code, shall enforce the controls during the 90-day period.

(f) If a nonpoint source water pollution control and abatement program is adopted by a river authority that has boundaries that encompass the extraterritorial jurisdiction of the municipality, the standards under the program adopted by the municipality must meet or exceed the standards under the program adopted by the river authority.

(g) The municipality may not grant a waiver to its nonpoint source water pollution control and abatement program unless granting the waiver would demonstrably improve water quality.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.01(b), eff. Aug. 26, 1991. Renumbered from Water Code Sec. 26.178 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(52), eff. Sept. 1, 1995. Renumbered from Water Code Sec. 26.179 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(75), eff. Sept. 1, 1997.

SUBCHAPTER F. CRIMINAL PROSECUTION

Sec. 26.215. PEACE OFFICERS. For purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are constituted peace officers. These agents and employees are empowered to enforce the provisions of this subchapter the same as any other peace officer, and for such purpose shall have the powers and duties of peace officers as set forth in the Code of Criminal Procedure, 1965, as amended.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 26.2171. VENUE. An offense under this subchapter may be prosecuted in a county in which an element of the offense was committed or a county to which or through which the discharge, waste, or pollutant was transported.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.26(b), eff. Sept. 1, 1991.

SUBCHAPTER G. OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION AND

CONTROL

Sec. 26.261. SHORT TITLE. This subchapter may be cited as the Texas Hazardous Substances Spill Prevention and Control Act.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 4204, ch. 669, Sec. 1, eff. Sept. 1, 1983.

Sec. 26.262. POLICY AND CONSTRUCTION. It is the policy of this state to prevent the spill or discharge of hazardous substances into the waters in the state and to cause the removal of such spills and discharges without undue delay. This subchapter shall be construed to conform with Chapter 40, Natural Resources Code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 4204, ch. 669, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 930, Sec. 1, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 10, Sec. 6, eff. March 28, 1991.

Sec. 26.263. DEFINITIONS. As used in this subchapter:

(1) "Discharge or spill" means an act or omission by which hazardous substances in harmful quantities are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into waters in this state or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter water in this state. The term "discharge" or "spill" under this subchapter shall not include any discharge to which Subchapter C, D, E, F, or G, Chapter 40, Natural Resources Code, applies or any discharge which is authorized by a permit issued pursuant to federal law or any other law of this state or, with the exception of spills in coastal waters, regulated by the Railroad Commission of Texas.

(2) "Account" means the Texas spill response account.

(3) "Harmful quantity" means that quantity of hazardous substance the discharge or spill of which is determined 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 by the administrator of the Environmental Protection Agency pursuant to federal law and by the executive director.

(4) "Hazardous substance" means any substance designated as such by the administrator of the Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601 et seq.), regulated pursuant to Section 311 of the federal Clean Water Act (33 U.S.C. Sec. 1321 et seq.), or designated by the commission.

(5) "Person" includes an individual, firm, corporation, association, and partnership.

(6) "Person responsible" or "responsible person" means:

(A) the owner, operator, or demise charterer of a vessel from which a spill emanates;

(B) the owner or operator of a facility from which a spill emanates;

(C) any other person who causes, suffers, allows, or permits a spill or discharge.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 4204, ch. 669, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 930, Sec. 2, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 99, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 10, Sec. 7, eff. March 28, 1991; Acts 1997, 75th Leg., ch. 333, Sec. 12, eff. Sept. 1, 1997.

Sec. 26.264. ADMINISTRATIVE PROVISIONS. (a) Except as provided in Chapter 40, Natural Resources Code, the commission shall be the state's lead agency in spill response, shall conduct spill response for the state, and shall otherwise administer this subchapter. The commission shall conduct spill response and cleanup for spills and discharges of hazardous substances other than oil in or threatening coastal waters. The commission shall cooperate with other agencies, departments, and subdivisions of this state and of the United States in implementing this subchapter. In the event of a discharge or spill and after reasonable effort to obtain entry rights from each property owner involved, if any, the executive director may enter affected property to carry out necessary spill response actions.

(b) The commission may issue rules necessary and convenient to carry out the purposes of this subchapter.

(c) The executive director shall enforce the provisions of this

subchapter and any rules given effect pursuant to Subsection (b) of this section.

(d) The executive director with the approval of the commission may contract with any public agency or private persons or other entity for the purpose of implementing this subchapter.

(e) The executive director shall solicit the assistance of and cooperate with local governments, the federal government, other agencies and departments of this state, and private persons and other entities to develop regional contingency plans for prevention and control of hazardous substance spills and discharges. The executive director may solicit the assistance of spill cleanup experts in determining appropriate measures to be taken in cleaning up a spill or discharge. The executive director shall develop a list of spill cleanup experts to be consulted, but shall not be limited to that list in seeking assistance. No person providing such assistance shall be held liable for any acts or omissions of the executive director which may result from soliciting such assistance.

(f) The commission and the Texas Department of Transportation, in cooperation with the governor, the United States Coast Guard, and the Environmental Protection Agency, shall develop a contractual agreement whereby personnel, equipment, and materials in possession or under control of the Texas Department of Transportation may be diverted and utilized for spill and discharge cleanup as provided for in this subchapter. Under the agreement, the following conditions shall be met:

(1) the commission and the Texas Department of Transportation shall develop and maintain written agreements and contracts on how such utilization will be effected, and designating agents for this purpose;

(2) personnel, equipment, and materials may be diverted only with the approval of the commission and the Texas Department of Transportation, acting through their designated agents, or by action of the governor;

(3) all expenses and costs of acquisition of such equipment and materials or resulting from such cleanup activities shall be paid from the account, subject to reimbursement as provided in this subchapter; and

(4) subsequent to such activities, a full report of all expenditures and significant actions shall be prepared and submitted to the governor and the Legislative Budget Board, and shall be

reviewed by the commission.

(g) The executive director shall develop and revise from time to time written action and contractual plans with the designated on-scene coordinator provided for by federal law.

(h)(1) In developing rules and plans under this subchapter and in engaging in cleanup activities under this subchapter, the commission shall recognize the authority of the predesignated federal on-scene coordinator to oversee, coordinate, and direct all private and public activities related to cleanup of discharges and spills that are undertaken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601 et seq.), the federal Clean Water Act (33 U.S.C. Sec. 1321 et seq.), and the national contingency plan authorized by the federal Clean Water Act (33 U.S.C. Sec. 1321 et seq.).

(2) Nothing in this subchapter shall require the state-designated on-scene coordinator to defer to federal authority, unless preempted by federal law, if remedial action is unduly delayed or is ineffective.

(3) Nothing in this subchapter shall prevent the executive director from appointing a state-designated on-scene coordinator and acting independently if no on-scene federal coordinator is present or no action is being taken by an agency of the federal government.

(4) If an incident under this subchapter is eligible for federal funds, the commission shall seek reimbursement from the designated agencies of the federal government for the reasonable costs incurred in cleanup operations, including but not limited to costs of personnel, equipment, the use of equipment, and supplies and restoration of land and aquatic resources held in trust or owned by the state.

(5) The commission may enter into contracts or cooperative agreements under Section 104(c) and (d) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601 et seq.) or Section 311 of the federal Clean Water Act (33 U.S.C. Sec. 1321 et seq.) to undertake authorized removal actions under this subchapter.

(i) The executive director shall after appropriate investigation prepare a report on state-funded cleanup of a discharge or spill, and this report shall provide the following information:

(1) a description of the incident, including location,

amount, and characteristics of the material discharged or spilled and the prevailing weather conditions;

(2) the time and duration of discharge or spill and the time and method by which the discharge or spill was reported;

(3) the action taken, and by whom, to contain and clean up the discharge or spill;

(4) an assessment of both the short-term and long-term environmental impact of the accidental discharge or spill;

(5) the cost of cleanup operations incurred by the state;

(6) an evaluation of the principal causes of the discharge or spill and an assessment of how similar incidents might be prevented in the future; and

(7) a description of any legal action being taken to levy penalties or collect damages.

(j) This subchapter is cumulative of all other powers of the commission.

(k) In the event that a discharge or spill presents or threatens to present an occurrence of disaster proportions, the governor shall utilize the authority granted him under Chapter 418, Government Code, to make available and bring to bear all resources of the state to prevent or lessen the impact of such a disaster.

(l) To the extent practicable and in lieu of the provisions of this subchapter, for facilities permitted under Chapter 361, Health and Safety Code to store, process, or dispose of hazardous waste, the department shall use procedures established under existing hazardous waste permits to abate or remove discharges or spills.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 4207, ch. 669, Sec. 2, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 795, Sec. 1.107, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 930, Sec. 3, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 99, Sec. 2, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 584, Sec. 105, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 10, Sec. 8, eff. March 28, 1991; Acts 1991, 72nd Leg., ch. 14, Sec. 284(75), eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 165, Sec. 22(75), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 13, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 26.004, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 26.005, eff. September 1, 2011.

Sec. 26.265. TEXAS SPILL RESPONSE ACCOUNT. (a) The Texas spill response account is an account in the general revenue fund. This account shall not exceed $5 million, exclusive of fines and penalties received under this subchapter.

(b) The account shall consist of money appropriated to it by the legislature and any fines, civil penalties, or other reimbursement to the account provided for under this subchapter.

(c) The commission may expend money in the account only for the purposes of:

(1) response to and investigation of spills and discharges;

(2) obtaining personnel, equipment, and supplies required in the cleanup of discharges and spills; and

(3) the assessment of damages to and the restoration of land and aquatic resources held in trust or owned by the state.

(d) In addition to any cause of action under Chapter 40, Natural Resources Code, the state has a cause of action against any responsible person for recovery of:

(1) expenditures out of the account; and

(2) costs that would have been incurred or paid by the responsible person if the responsible person had fully carried out the duties under Section 26.266 of this code, including:

(A) reasonable costs of reasonable and necessary scientific studies to determine impacts of the spill on the environment and natural resources and to determine the manner in which to respond to spill impacts;

(B) costs of attorney services;

(C) out-of-pocket costs associated with state agency action;

(D) reasonable costs incurred by the state in cleanup operations, including costs of personnel, equipment, and supplies and restoration of land and aquatic resources held in trust or owned by the state; and

(E) costs of remediating injuries proximately caused by reasonable cleanup activities.

(e) The state's right to recover under Subsection (d) of this section arises whether or not expenditures have actually been made

out of the account.

(f) It is the intent of the legislature that the state attempt to recover the costs of cleanup according to the following priority:

(1) a responsible person; and

(2) the federal government to the extent that recovery from a responsible person is insufficient to pay the costs of cleanup.

(g) In a suit brought under Subsection (d) of this section, any responsible person who, after reasonable notice has been given by the executive director, has failed, after a reasonable period, to carry out his duties under Section 26.266 of this code is liable to the state for twice the costs incurred by the state under this subchapter in cleaning up the spill or discharge. Reasonable notice under this subsection must include a statement as to the basis for finding the person to whom notice is sent to be a responsible person. Any responsible person held liable under this subsection or Subsection (d) of this section has the right to recover indemnity or contribution from any third party who caused, suffered, allowed, or permitted the spill or discharge. Liability arising under this subsection or Subsection (d) of this section does not affect any rights the responsible person has against a third party whose acts caused or contributed to the spill or discharge.

(h) Notwithstanding Subsection (g), a responsible person who enters into a settlement agreement with the state that resolves all liability of the person to the state for a site subject to Subchapter F, Chapter 361, Health and Safety Code, is released from liability to a person described by Section 361.344(a), Health and Safety Code, for contribution or indemnity under this code regarding a matter addressed in the settlement agreement.

(i) A settlement agreement does not discharge the liability of a nonsettling person to the state unless the agreement provides otherwise.

(j) Notwithstanding Subsection (i), a settlement agreement reduces the potential liability to the state of the nonsettling persons by the amount of the settlement.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 4204, ch. 669, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 795, Sec. 1.108, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 930, Sec. 4, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 99, Sec. 3, eff. Sept. 1, 1989; Acts 1991,

72nd Leg., ch. 10, Sec. 9, eff. March 28, 1991; Acts 1993, 73rd Leg., ch. 746, Sec. 3, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 14, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 19, eff. Sept. 1, 1997.

Sec. 26.266. REMOVAL OF SPILL OR DISCHARGE. (a) Any owner, operator, demise charterer, or person in charge of a vessel or of any on-shore facility or off-shore facility shall immediately undertake all reasonable actions to abate and remove the discharge or spill subject to applicable federal and state requirements, and subject to the control of the federal on-scene coordinator.

(b) In the event that the responsible person is unwilling or in the opinion of the executive director is unable to remove the discharge or spill, or the removal operation of the responsible person is inadequate, the commission may undertake the removal of the discharge or spill and may retain agents for these purposes who shall operate under the direction of the executive director.

(c) Any discharge or spill of a hazardous substance, the source of which is unknown, occurring in or having a potentially harmful effect on waters in this state or in waters beyond the jurisdiction of this state and which may reasonably be expected to enter waters in this state may be removed by or under the direction of the executive director. Any expense involved in the removal of an unexplained discharge pursuant to this subsection shall be paid, on the commission's approval, from the account, subject to the authority of the commission to seek reimbursement from an agency of the federal government, and from the responsible person if the identity of that person is discovered.

(d) Deleted by Acts 1989, 71st Leg., ch. 99, Sec. 4, eff. Sept. 1, 1989.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 4209, ch. 669, Sec. 3, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 795, Sec. 1.109, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 930, Sec. 5, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 99, Sec. 4, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 333, Sec. 15, eff. Sept. 1, 1997.

Sec. 26.267. EXEMPTIONS. (a) No person shall be held liable under this subchapter for any spill or discharge resulting from an act of God, act of war, third party negligence, or an act of government.

(b) Nothing in this subchapter shall in any way affect or limit the liability of any person to any other person or to the United States, or to this state.

(c) Notwithstanding any other provision of this subchapter, the state or the commission shall utilize any and all procedures relating to releases or threatened releases of solid wastes contained in Chapter 361, Health and Safety Code prior to utilizing the provisions of this subchapter with respect to such releases or threatened releases.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 930, Sec. 6, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 29, eff. June 19, 1987; Acts 1991, 72nd Leg., ch. 14, Sec. 284(75), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 16, Sec. 18.01, eff. Aug. 26, 1991.

SUBCHAPTER H. POULTRY OPERATIONS

Sec. 26.301. DEFINITIONS. In this subchapter:

(1) "Poultry" means chickens or ducks being raised or kept on any premises in the state for profit.

(2) "Poultry carcass" means the carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(3) "Poultry facility" means a facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(4) "Poultry litter" includes poultry excrement, bedding, and feed waste.

(5) "Liquid waste handling system" has the meaning assigned by Section 26.0286.

Added by Acts 1997, 75th Leg., ch. 1074, Sec. 1, eff. March 1, 1998.
Amended by:

Acts 2005, 79th Leg., Ch. 418 (S.B. 1707), Sec. 3, eff. September

1, 2005.

Sec. 26.302. REGULATION OF POULTRY FACILITIES. (a) A person who owns or operates a poultry facility shall ensure that the facility has adequate means or is adequately equipped to handle and dispose of poultry carcasses, poultry litter, and other poultry waste regardless of whether the person owns the poultry.

(b) A person who owns or operates a poultry facility shall implement and maintain a water quality management plan for the facility that is certified by the State Soil and Water Conservation Board under Section 201.026, Agriculture Code.

(b-1) The State Soil and Water Conservation Board may certify a water quality management plan for a poultry facility that:

(1) does not use a liquid waste handling system; and

(2) is required to obtain a permit or other authorization from the commission.

(b-2) The State Soil and Water Conservation Board in consultation with the Texas Commission on Environmental Quality by rule shall establish criteria to determine the geographic, seasonal, and agronomic factors that the board will consider to determine whether a persistent nuisance odor condition is likely to occur when assessing the siting and construction of new poultry facilities.

(b-3) The State Soil and Water Conservation Board may not certify a water quality management plan for a poultry facility located less than one-half of one mile from a business, off-site permanently inhabited residence, or place of worship if the presence of the facility is likely to create a persistent odor nuisance for such neighbors, unless the poultry facility provides an odor control plan the executive director determines is sufficient to control odors. This subsection does not apply to:

(1) a revision of a previously certified and existing water quality management plan unless the revision is necessary because of an increase in poultry production of greater than 50 percent than the amount included in the existing certified water quality management plan for the facility; or

(2) any poultry facility located more than one-half of one mile from a surrounding business, permanently inhabited off-site residence, or place of worship established before the date of construction of the poultry facility.

(c) The commission may bring a cause of action to remedy or prevent a violation of this section.

(d) This section does not affect the authority of the commission to investigate or take enforcement action against an unauthorized discharge under Section 26.121.

Added by Acts 1997, 75th Leg., ch. 1074, Sec. 1, eff. March 1, 1998.
Amended by Acts 2001, 77th Leg., ch. 277, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2005, 79th Leg., Ch. 418 (S.B. 1707), Sec. 4, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 2, eff. September 1, 2009.

Sec. 26.303. HANDLING AND DISPOSAL OF POULTRY CARCASSES. (a) Except as provided by Subsection (a-1), the commission by rule shall adopt requirements for the safe and adequate handling, storage, transportation, and disposal of poultry carcasses. The rules must:

(1) specify the acceptable methods for disposal of poultry carcasses, including:

(A) placement in a landfill permitted by the commission to receive municipal solid waste;

(B) composting;

(C) cremation or incineration;

(D) extrusion;

(E) on-farm freezing;

(F) rendering; and

(G) any other method the commission determines to be appropriate;

(2) require poultry carcasses stored on the site of a poultry facility to be stored in a varmint-proof receptacle to prevent odor, leakage, or spillage;

(3) prohibit the storage of poultry carcasses on the site of a poultry facility for more than 72 hours unless the carcasses are refrigerated or frozen; and

(4) authorize the on-site burial of poultry carcasses only in the event of a major die-off that exceeds the capacity of a poultry facility to handle and dispose of poultry carcasses by the normal means used by the facility.

(a-1) A rule adopted under Subsection (a) may not apply to the disposal of carcasses of poultry that died as a result of a disease, which is governed by Section 161.004, Agriculture Code.

(b) A person must obtain any permit required by other law before disposing of poultry carcasses as provided by Subsection (a)(1).

Added by Acts 1997, 75th Leg., ch. 1074, Sec. 1, eff. March 1, 1998.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1198 (H.B. 1457), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 17, eff. September 1, 2007.

Sec. 26.304. RECORDS OF SALE, PURCHASE, TRANSFER, OR APPLICATION OF POULTRY LITTER. (a) A poultry facility that sells or transfers poultry litter for off-site application must maintain until the second anniversary of the date of sale or transfer a record regarding:

(1) the identity of the purchaser or applicator;

(2) the physical destination of the poultry litter identified by the purchaser or transferee;

(3) the date the poultry litter was removed from the poultry facility; and

(4) the number of tons of poultry litter removed.

(b) A person that purchases or obtains poultry litter for land application must maintain until the second anniversary of the date of application a signed and dated proof of delivery document for every load of poultry litter applied to land. The landowner or the owner's tenant or agent shall note on the document the date or dates on which the poultry litter was applied to land.

(c) Subsection (b) does not apply to poultry litter that is:

(1) taken to a composting facility;

(2) used as a bio-fuel;

(3) used in a bio-gasification process; or

(4) otherwise beneficially used without being applied to land.

Added by Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 3, eff. September 1, 2009.

Sec. 26.305. INSPECTION OF RECORDS. The commission may inspect any record required to be maintained under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 3, eff. September 1, 2009.

SUBCHAPTER I. UNDERGROUND AND ABOVEGROUND STORAGE TANKS

Sec. 26.341. PURPOSE. (a) The legislature finds that leaking underground tanks storing certain hazardous, toxic, or otherwise harmful substances have caused and continue to pose serious groundwater contamination problems in Texas.

(b) The legislature declares that it is the policy of this state and the purpose of this subchapter to:

(1) maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources; and

(2) require the use of all reasonable methods, including risk-based corrective action, to implement this policy.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 228, Sec. 1, eff. May 31, 1989; Acts 1995, 74th Leg., ch. 315, Sec. 1, eff. Sept. 1, 1995.

Sec. 26.342. DEFINITIONS. In this subchapter:

(1) "Aboveground storage tank" means a nonvehicular device that is:

(A) made of nonearthen materials;

(B) located on or above the surface of the ground or on or above the surface of the floor of a structure below ground such as a mineworking, basement, or vault; and

(C) designed to contain an accumulation of petroleum.

(2) "Claim" means a demand in writing for a certain sum.

(3) "Corporate fiduciary" means an entity chartered by the Banking Department of Texas, the Department of Savings and Mortgage Lending, the United States comptroller of the currency, or the director of the United States Office of Thrift Supervision that acts

as a receiver, conservator, guardian, executor, administrator, trustee, or fiduciary of real or personal property.

(4) "Eligible owner or operator" means a person designated as an eligible owner or operator for purposes of this subchapter by the commission under Section 26.3571(d) of this code.

(5) "Hazardous substance" has the meaning assigned by Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.).

(6) "Hydraulic fluid" means any regulated substance that can be used in a hydraulic lift system.

(7) "Lender" means:

(A) a state or national bank;

(B) a state or federal savings and loan association or savings bank;

(C) a credit union;

(D) a state or federal agency that customarily provides financing; or

(E) an entity that is registered with the Office of Consumer Credit Commissioner pursuant to Chapter 348 or 353, Finance Code, if the entity is regularly engaged in the business of extending credit and if extending credit represents the majority of the entity's total business activity.

(8) "Operator" means any person in day-to-day control of and having responsibility for the daily operation of the underground storage tank system.

(9) "Owner" means a person who holds legal possession or ownership of an interest in an underground storage tank system or an aboveground storage tank. If the actual ownership of an underground storage tank system or an aboveground storage tank is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the tank system is located is considered the owner of the system unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, or bill of sale, or by other legally acceptable means that the underground storage tank system or aboveground storage tank is owned by another person. A person that has registered as an owner of an underground storage tank system or aboveground storage tank with the commission under Section 26.346 after September 1, 1987, shall be considered the tank system owner until such time as documentation demonstrates to

the executive director's satisfaction that the legal interest in the tank system was transferred to a different person subsequent to the date of the tank registration. This definition is subject to the limitations found in Section 26.3514 (Limits on Liability of Lender), Section 26.3515 (Limits on Liability of Corporate Fiduciary), and Section 26.3516 (Limits on Liability of Taxing Unit).

(10) "Person" means an individual, trust, firm, joint-stock company, corporation, government corporation, partnership, association, state, municipality, commission, political subdivision of a state, an interstate body, a consortium, joint venture, commercial entity, or the United States government.

(11) "Petroleum product" means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

(12) "Petroleum storage tank" means:

(A) any one or combination of aboveground storage tanks that contain petroleum products and that are regulated by the commission; or

(B) any one or combination of underground storage tanks and any connecting underground pipes that contain petroleum products and that are regulated by the commission.

(13) "Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment.

(14) "Release" means any spilling including overfills, leaking, emitting, discharging, escaping, leaching, or disposing from an underground or aboveground storage tank into groundwater, surface water, or subsurface soils.

(15) "Risk-based corrective action" means site assessment or site remediation, the timing, type, and degree of which is determined according to case-by-case consideration of actual or potential risk to public health from environmental exposure to a regulated substance released from a leaking underground or aboveground storage tank.

(16) "Spent oil" means a regulated substance that is a lubricating oil or similar petroleum substance which has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of that use by physical or chemical impurities, including spent motor vehicle lubricating oils, transmission fluid, or brake fluid.

(16-a) "Subsurface soil" does not include backfill or native material that is placed immediately adjacent to or surrounding an underground storage tank system when the system is installed or the system's individual components are replaced unless free phase petroleum product is present in the backfill or native material.

(17) "Underground storage tank" means any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10 percent or more beneath the surface of the ground.

(18) "Vehicle service and fueling facility" means a facility where motor vehicles are serviced or repaired and where petroleum products are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 228, Sec. 1, eff. May 31, 1989; Acts 1991, 72nd Leg., ch. 905, Sec. 1, eff. June 16, 1991; Acts 1995, 74th Leg., ch. 315, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 7.96, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1441, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 14.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. 485), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1256 (H.B. 1987), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.068, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 25, eff. September 1, 2011.

Sec. 26.343. REGULATED SUBSTANCES. (a) Regulated substances under this subchapter include:

(1) a substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), but does not include a substance regulated as a hazardous waste under the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.);

(2) petroleum, including crude oil or a fraction of it, that is liquid at standard conditions of temperature and pressure; and

(3) any other substance designated by the commission.

(b) Standard conditions of temperature and pressure under Subdivision (2) of Subsection (a) of this section are 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.344. EXEMPTIONS. (a) An underground or aboveground storage tank is exempt from regulation under this subchapter if the tank is:

(1) a farm or residential tank with a capacity of 1,100 gallons or less used for storing motor fuel for noncommercial purposes;

(2) used for storing heating oil for consumptive use on the premises where stored;

(3) a septic tank;

(4) a surface impoundment, pit, pond, or lagoon;

(5) a storm water or waste water collection system;

(6) a flow-through process tank;

(7) a tank, liquid trap, gathering line, or other facility used in connection with an activity associated with the exploration, development, or production of oil, gas, or geothermal resources, or any other activity regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code; or

(8) a transformer or other electrical equipment that contains a regulated substance and that is used in the transmission of electricity, to the extent that such a transformer or equipment is exempted by the United States Environmental Protection Agency under 40 C.F.R. Part 280.

(b) A storage tank is exempt from regulation under this subchapter if the sole or principal substance in the tank is a hazardous substance and the tank is located:

(1) in an underground area, including a basement, cellar, mineworking, drift, shaft, or tunnel; and

(2) on or above the surface of the floor of that area.

(c) An interstate pipeline facility, including gathering lines, or an aboveground storage tank connected to such a facility is exempt from regulation under this subchapter if the pipeline facility is regulated under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(d) An intrastate pipeline facility or an aboveground storage tank connected to such a facility is exempt from regulation under this subchapter if the pipeline facility is regulated under one of the following state laws:

(1) Chapter 111, Natural Resources Code;

(2) Chapter 117, Natural Resources Code; or

(3) Subchapter E, Chapter 121, Utilities Code.

(e) Except for Section 26.351 of this subchapter, in-ground hydraulic lifts that use a compressed air/hydraulic fluid system and hold less than 100 gallons of hydraulic oil, if exempt by the federal Environmental Protection Agency, are exempt under this subchapter.

(f) An aboveground storage tank that is located at or is part of a petrochemical plant, a petroleum refinery, an electric generating facility, or a bulk facility as that term is defined by Section 26.3574(a) of this code is exempt from regulation under this subchapter but is not exempt for purposes of the fee imposed under Section 26.3574 of this code.

(g) Costs incurred as a result of a release from a storage tank system owned, operated, or maintained by a common carrier railroad are not reimbursable pursuant to the provisions of this section. Common carrier railroads are exempt from the fees collected pursuant to the provisions of this Act.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 228, Sec. 1, eff. May 31, 1989; Acts 1999, 76th Leg., ch. 62, Sec. 18.64, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 13, eff. September 1, 2013.

Sec. 26.3441. ABOVEGROUND STORAGE TANKS. (a) An aboveground storage tank that is not exempt from regulation under Section 26.344 of this code is subject to the registration requirements of Section 26.346 of this code and to regulation by the commission only to the extent prescribed by this subchapter.

(b) The commission may not develop a regulatory program for aboveground storage tanks that is more extensive than the regulatory program authorized by this subchapter unless additional regulation of aboveground storage tanks is necessary to comply or be in conformity with requirements adopted by the United States Environmental Protection Agency or with federal law.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 2, eff. May 31, 1989.

Sec. 26.345. ADMINISTRATIVE PROVISIONS. (a) The commission shall administer this subchapter and may develop a regulatory program regarding underground and aboveground storage tanks in accordance with this subchapter.

(b) In implementing this subchapter, the commission shall cooperate with:

(1) cities and towns;

(2) agencies, departments, and other political subdivisions of the state; and

(3) the United States and its agencies.

(c) The commission may adopt rules necessary to carry out the purposes of this subchapter.

(d) The commission may authorize the executive director to enter into contracts with a public agency, private person, or other entity for the purpose of implementing this subchapter.

(e) The commission may enter into contracts and cooperative agreements with the federal government to carry out remedial action for releases from underground and aboveground storage tanks as authorized by the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.).

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 228, Sec. 3, eff. May 31, 1989.

Sec. 26.346. REGISTRATION REQUIREMENTS. (a) An underground or aboveground storage tank must be registered with the commission unless the tank is exempt from regulation under Section 26.344 of this code or the tank is covered under Subsection (b) of this section. The commission by rule shall establish the procedures and requirements for establishing and maintaining current registration information concerning underground and aboveground storage tanks. The commission shall also require that an owner or operator of an underground storage tank used for storing motor fuels (as defined in commission rule) complete an annual underground storage tank compliance certification form.

(b) An underground storage tank is not required to be registered if the tank:

(1) does not contain a regulated substance; and

(2) is not in operation and has not been in operation since January 1, 1974.

(c) The commission shall issue to each person who owns or operates a petroleum storage tank that is registered under this section a registration and compliance confirmation certificate that includes a brief description of:

(1) the responsibility of the owner or operator under Section 26.3512 of this code;

(2) the rights of the owner or operator to participate in the petroleum storage tank remediation account and the groundwater protection cleanup program established under this subchapter; and

(3) the responsibility of the owner or operator of an underground storage tank to accurately complete the part of the registration form pertaining to the certification of compliance with underground storage tank administrative requirements and technical standards if the tank is used for storing motor fuels (as defined in commission rule).

(d) A person who has previously provided notice to the commission of an underground storage tank under Section 9002 of the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.) is not required to register the tank with the commission under this section.

(e) The owner or operator of an underground or aboveground storage tank installed before December 1, 1995, that is required to be registered under this section and that has not been registered on or before December 31, 1995, is not eligible to receive reimbursement

for that tank from the petroleum storage tank remediation account except for:

(1) an owner of a registered facility who discovers an unregistered tank while removing, upgrading, or replacing a tank or while performing a site assessment;

(2) a state or local governmental agency that purchases a right-of-way and discovers during construction an unregistered tank in the right-of-way; or

(3) a property owner who reasonably could not have known that a tank was located on the property because a title search or the previous use of the property does not indicate a tank on the property.

(f) The owner or operator of an underground or aboveground storage tank installed on or after December 1, 1995, must register the tank under this section not later than the 30th day after the date the installation is completed to be eligible for reimbursement for the new tank.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 228, Sec. 4, eff. May 31, 1989; Acts 1995, 74th Leg., ch. 315, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1441, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 14.02, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 2, eff. Sept. 1, 2001.

Sec. 26.3465. FAILURE OR REFUSAL TO PROVIDE PROOF OF REGISTRATION OR CERTIFICATION OF COMPLIANCE. An owner or operator of an underground storage tank who fails or refuses to provide, on request of the commission, proof of registration of or certification of compliance for an underground storage tank is liable for a civil penalty under Subchapter D, Chapter 7.

Added by Acts 1999, 76th Leg., ch. 1441, Sec. 3, eff. Sept. 1, 1999.

Sec. 26.3467. DUTY TO ENSURE CERTIFICATION OF TANK BEFORE DELIVERY. (a) The owner or operator of an underground storage tank into which a regulated substance is to be deposited shall provide the common carrier a copy of the certificate of compliance for the

specific underground storage tank into which the regulated substance is to be deposited before accepting delivery of the regulated substance into the underground storage tank. The owner or operator of an underground storage tank may comply with this subsection by obtaining a current copy of the certificate from the commission's Internet website.

(b) An owner or operator of an underground storage tank who violates Subsection (a) commits an offense that is punishable as provided by Section 7.156 for an offense under that section.

(c) A person who sells a regulated substance to a common carrier who delivers the regulated substance to the owner or operator of an underground storage tank into which the regulated substance is deposited, and who does not deliver the regulated substance into the underground storage tank, is not liable under this chapter with respect to that tank.

(d) A person may not deliver any regulated substance into an underground storage tank regulated under this chapter unless the underground storage tank has been issued a valid, current underground storage tank registration and certificate of compliance under Section 26.346. The commission may impose an administrative penalty against a person who violates this subsection. The commission shall adopt rules as necessary to enforce this subsection.

(e) It is an affirmative defense to the imposition of an administrative penalty for a violation of Subsection (d) that the person delivering a regulated substance into an underground storage tank relied on:

(1) a valid paper delivery certificate presented by the owner or operator of the underground storage tank or displayed at the facility associated with the underground storage tank;

(2) a temporary delivery authorization presented by the owner or operator of the underground storage tank or displayed at the facility associated with the underground storage tank; or

(3) registration and self-certification information for the underground storage tank obtained from the commission's Internet website not more than 30 days before the date of delivery.

Added by Acts 1999, 76th Leg., ch. 1441, Sec. 3, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 1283, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. 485), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1256 (H.B. 1987), Sec. 3, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.16, eff. September 1, 2011.

Sec. 26.347. TANK STANDARDS. (a) The commission shall adopt performance standards for existing underground storage tanks and underground storage tanks brought into use on or after the effective date of the standards.

(b) The performance standards for underground storage tanks must include design, construction, installation, release detection, and compatibility standards.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 228, Sec. 5, eff. May 31, 1989.

Sec. 26.3475. RELEASE DETECTION REQUIREMENTS; SPILL AND OVERFILL PREVENTION; CORROSION PROTECTION; NOTICE OF VIOLATION; SHUTDOWN. (a) All piping in an underground storage tank system that routinely conveys regulated substances under pressure must comply with commission requirements for pressurized piping release detection equipment.

(b) All piping in an underground storage tank system that routinely conveys regulated substances under suction must comply with commission requirements for suction-type piping release detection equipment.

(c) A tank in an underground storage tank system must comply with commission requirements for:

(1) tank release detection equipment; and

(2) spill and overfill equipment.

(d) An underground storage tank system must comply with commission requirements for applicable tank integrity assessment and corrosion protection not later than December 22, 1998.

(e) The commission may issue a notice of violation to the owner or operator of an underground storage tank system that does not comply with this section, informing the owner or operator of the

nature of the violation and that the commission may order the noncomplying underground storage tank system placed out of service if the owner or operator does not correct the violation within 30 days after the date the notice is received. If the owner or operator does not correct the violation within the prescribed time, the commission may order the noncomplying underground storage tank system out of service.

Added by Acts 1995, 74th Leg., ch. 315, Sec. 4, eff. Sept. 1, 1995.

Sec. 26.3476. SECONDARY CONTAINMENT REQUIRED FOR TANKS LOCATED OVER CERTAIN AQUIFERS. (a) In this section, "secondary containment" means a method by which a secondary wall or barrier is installed around an underground storage tank system in a manner designed to prevent a release of a regulated substance from migrating beyond the secondary wall or barrier before the release can be detected. A secondary containment system may include an impervious liner or vault surrounding a primary tank or piping system or a double-wall tank or piping system.

(b) An underground storage tank system, at a minimum, shall incorporate a method for secondary containment if the system is located in:

(1) the outcrop of a major aquifer composed of limestone and associated carbonate rocks of Cretaceous age or older; and

(2) a county that:

(A) has a population of at least one million and relies on groundwater for at least 75 percent of the county's water supply; or

(B) has a population of at least 75,000 and is adjacent to a county described by Paragraph (A).

(c) Section 26.3475(e) applies to an underground storage tank system that is subject to this section as if a violation of this section were a violation of Section 26.3475.

(d) Notwithstanding Section 26.359(b), a political subdivision under this section may adopt standards for the containment of underground storage tank systems.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 13.01, eff. Sept. 1, 2001.

Sec. 26.348. LEAK DETECTION AND RECORD MAINTENANCE. The commission shall adopt standards of performance for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment. In addition, the commission shall adopt requirements for maintaining records of any leak detection monitoring that includes inventory control or tank testing system or comparable system.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.349. REPORTING OF RELEASES AND CORRECTIVE ACTION. (a) The commission shall adopt requirements for the reporting of any releases and corrective action taken in response to a release from an underground or aboveground storage tank.

(b) Repealed by Acts 1997, 75th Leg., ch. 1082, Sec. 12, eff. Sept. 1, 1997.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 228, Sec. 6, eff. May 31, 1989.

Sec. 26.350. TANK CLOSURE REQUIREMENTS. The commission shall adopt requirements for the closure of tanks, including the removal, disposal, or removal and disposal of tanks to prevent future releases of regulated substances into the environment.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.351. CORRECTIVE ACTION. (a) The commission shall use risk-based corrective action for taking corrective action in response to a release from an underground or aboveground storage tank. Corrective action may include:

(1) site cleanup, including the removal, treatment, and disposal of surface and subsurface contamination;

(2) removal of underground or aboveground storage tanks;

(3) measures to halt a release in progress or to prevent future or threatened releases of regulated substances;

(4) well monitoring, taking of soil borings, and any other actions reasonably necessary to determine the extent of contamination caused by a release;

(5) providing alternate water supplies; and

(6) any other action reasonably necessary to protect the public health and safety or the environment from harm or threatened harm due to releases of regulated substances from underground or aboveground storage tanks.

(b) The owner or operator of an underground or aboveground storage tank shall immediately take all reasonable actions to prevent a threatened release of regulated substances from an underground or aboveground storage tank and to abate and remove any releases subject to applicable federal and state requirements. The owner or operator may be ordered to take corrective action under this subchapter.

(c) The commission may undertake corrective action in response to a release or a threatened release if:

(1) the owner or operator of the underground or aboveground storage tank is unwilling to take corrective action;

(2) the owner or operator of the underground or aboveground storage tank cannot be found;

(3) the owner or operator of the underground or aboveground storage tank, in the opinion of the executive director, is unable to take the corrective action necessary to protect the public health and safety or the environment; or

(4) notwithstanding any other provision of this chapter, the executive director determines that more expeditious corrective action than is provided by this chapter is necessary to protect the public health and safety or the environment from harm.

(c-1) The commission may undertake corrective action to remove an underground or aboveground storage tank that:

(1) is not in compliance with the requirements of this chapter;

(2) is out of service;

(3) presents a contamination risk; and

(4) is owned or operated by a person who is financially unable to remove the tank.

(c-2) The commission shall adopt rules to implement Subsection (c-1), including rules regarding:

(1) the determination of the financial ability of the tank owner or operator to remove the tank; and

(2) the assessment of the potential risk of contamination from the site.

(d) The commission may retain agents to take corrective action it considers necessary under this section. The agents shall operate under the direction of the executive director. Any expenses arising from corrective action taken by the commission or the executive director may be paid from the waste management account.

(e) The commission has the primary regulatory authority to direct the remediation of a release from an underground or aboveground storage tank that contains petroleum if the release does not present an immediate or imminent threat of fire or explosion.

(f) The person performing corrective action under this section, if the release was reported to the commission on or before December 22, 1998, shall meet the following deadlines:

(1) a complete site assessment and risk assessment (including, but not limited to, risk-based criteria for establishing target concentrations), as determined by the executive director, must be received by the agency no later than September 1, 2002;

(2) a complete corrective action plan, as determined by the executive director and including, but not limited to, completion of pilot studies and recommendation of a cost-effective and technically appropriate remediation methodology, must be received by the agency no later than September 1, 2003. The person may, in lieu of this requirement, submit by this same deadline a demonstration that a corrective action plan is not required for the site in question under commission rules. Such demonstration must be to the executive director's satisfaction;

(3) for those sites found under Subdivision (2) to require a corrective action plan, that plan must be initiated and proceeding according to the requirements and deadlines in the approved plan no later than March 1, 2004;

(4) for sites which require either a corrective action plan or groundwater monitoring, a comprehensive and accurate annual status report concerning those activities must be submitted to the agency;

(5) for sites which require either a corrective action plan or groundwater monitoring, all deadlines set by the executive director concerning the corrective action plan or approved groundwater monitoring plan shall be met; and

(6) for sites that require either a corrective action plan or groundwater monitoring, have met all other deadlines under this

subsection, and have submitted annual progress reports that demonstrate progress toward meeting closure requirements, a site closure request must be submitted to the executive director no later than September 1, 2011. The request must be complete, as judged by the executive director.

(g) For persons regulated under Subsection (f), their failure to comply with any deadline listed in Subsection (f) is a violation of this section and the executive director may enforce such a violation under Chapter 7 of this code. A missed deadline that is the fault of the person, his agent, or contractor shall also eliminate reimbursement eligibility as described at Section 26.3571(b). If it can be established to the executive director's satisfaction that the deadline was not missed at the fault of the person, his agent, or contractor, then reimbursement eligibility is not affected under this subsection.

(h) A person's liability to perform corrective action under this chapter is unrelated to any possible reimbursements the person may be eligible for under Section 26.3571.

(i) The commission shall by rule define "risk-based corrective action" for purposes of this section.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 228, Sec. 7, eff. May 31, 1989; Acts 1997, 75th Leg., ch. 333, Sec. 17, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 14.03, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. 485), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 5.01, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1256 (H.B. 1987), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1109 (H.B. 3554), Sec. 1, eff. August 27, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.17, eff. September 1, 2011.

Sec. 26.3511. CORRECTIVE ACTION BY THE COMMISSION. (a)

Notwithstanding Section 26.351(c) of this code, to the extent that the commission pays from the petroleum storage tank remediation account or from sources other than the waste management account the expenses of the investigations, cleanups, and corrective action measures it performs, the commission may undertake those corrective action measures described in Section 26.351 of this code in response to a release or a threatened release from an underground or aboveground storage tank under any circumstances in which the commission considers it necessary to protect the public health and safety or the environment.

(b) The state, the commission, and their agents or employees are not liable for damages arising out of the loss of access to or the use of real property or losses to a business located on the real property if those damages arise out of a delay in procuring services for corrective action, initiating corrective action, or completing corrective action on the property. This subsection applies only to cases in which the commission undertakes corrective action.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 8, eff. May 31, 1989. Amended by Acts 1997, 75th Leg., ch. 333, Sec. 18, eff. Sept. 1, 1997.

Sec. 26.3512. OWNER OR OPERATOR RESPONSIBILITY; LIMITATIONS ON ACCOUNT PAYMENTS FOR CORRECTIVE ACTION. (a) The provisions of this subchapter relating to the groundwater protection cleanup program and to the petroleum storage tank remediation account do not limit the responsibility or liability of an owner or operator of a petroleum storage tank required to take corrective action under an order issued in accordance with this subchapter by the commission.

(b) Funds from the petroleum storage tank remediation account may not be used to pay, and the owner or operator of a petroleum storage tank ordered by the commission to take corrective action is responsible for payment of, the following:

(1) the owner or operator contribution described by Subsections (e)-(k);

(2) any expenses for corrective action that exceed the applicable amount specified by Section 26.3573(m);

(3) any expenses for corrective action that are not covered by payment from the petroleum storage tank remediation account under

the rules or decisions of the commission under this subchapter;

(4) any expenses for corrective action not ordered or agreed to by the commission;

(5) any expenses for corrective action incurred for confirmed releases initially discovered and reported to the commission after December 22, 1998; and

(6) any corrective action expenses for which reimbursement is prohibited under Section 26.3571, 26.3573, or 26.361.

(c) The owner or operator contribution under Subsection (b)(1) of this section may include the costs of site assessment.

(d) Subsection (b)(1) of this section does not prohibit payment from the petroleum storage tank remediation account of expenses incurred by an eligible owner or operator as a result of an order issued by the commission under Section 26.356 of this code if the commission finds that the eligible owner or operator is not responsible for the release from a petroleum storage tank. An eligible owner or operator covered by this subsection is eligible for reimbursement from the petroleum storage tank remediation account for the expenses incurred relating to corrective action that result from the order issued by the commission under Section 26.356 of this code.

(e) If an owner or operator submits a site assessment in accordance with commission rules before December 23, 1996, the owner or operator shall pay under Subsection (b)(1) the first expenses for corrective action taken for each occurrence as follows:

(1) a person who owns or operates 1,000 or more single petroleum storage tanks, the first $10,000;

(2) a person who owns or operates not fewer than 100 or more than 999 single petroleum storage tanks, the first $5,000;

(3) a person who owns or operates not fewer than 13 or more than 99 single petroleum storage tanks, the first $2,500; and

(4) a person who owns or operates fewer than 13 single petroleum storage tanks, the first $1,000.

(f) If an owner or operator does not submit a site assessment in accordance with commission rules before December 23, 1996, the owner or operator shall pay under Subsection (b)(1) the first expenses for corrective action taken for each occurrence as follows:

(1) a person who owns or operates 1,000 or more single petroleum storage tanks, the first $20,000;

(2) a person who owns or operates not fewer than 100 or more than 999 single petroleum storage tanks, the first $10,000;

(3) a person who owns or operates not fewer than 13 or more than 99 single petroleum storage tanks, the first $5,000; and

(4) a person who owns or operates fewer than 13 single petroleum storage tanks, the first $2,000.

(g) If an owner or operator's corrective action plan is approved by the commission under Section 26.3572 before June 23, 1998, the owner or operator shall pay under Subsection (b)(1) the amount provided by Subsection (e) for the first expenses for corrective action taken for each occurrence.

(h) If an owner or operator's corrective action plan is not approved by the commission under Section 26.3572 before June 23, 1998, the owner or operator shall pay under Subsection (b)(1) the first expenses for corrective action taken for each occurrence as follows:

(1) a person who owns or operates 1,000 or more single petroleum storage tanks, the first $40,000;

(2) a person who owns or operates not fewer than 100 or more than 999 single petroleum storage tanks, the first $20,000;

(3) a person who owns or operates not fewer than 13 or more than 99 single petroleum storage tanks, the first $10,000; and

(4) a person who owns or operates fewer than 13 single petroleum storage tanks, the first $4,000.

(i) If an owner or operator has a corrective action plan approved by the commission under Section 26.3572 and before December 23, 1999, has met the goals specified in the plan to be met by that date, the owner or operator shall pay under Subsection (b)(1) the amount specified by Subsection (e) for the first expenses for corrective action taken for each occurrence.

(j) If an owner or operator does not have a corrective action plan approved by the commission under Section 26.3572 and before December 23, 1999, has not met the goals specified in the plan to be met by that date, the owner or operator shall pay under Subsection (b)(1) the first expenses for corrective action taken for each occurrence as follows:

(1) a person who owns or operates 1,000 or more single petroleum storage tanks, the first $80,000;

(2) a person who owns or operates not fewer than 100 or more than 999 single petroleum storage tanks, the first $40,000;

(3) a person who owns or operates not fewer than 13 or more than 99 single petroleum storage tanks, the first $20,000; and

(4) a person who owns or operates fewer than 13 single petroleum storage tanks, the first $8,000.

(k) An owner or operator of a site for which a closure letter has been issued under Section 26.3572 shall pay under Subsection (b)(1) the first $50,000 of expenses for corrective action for each occurrence.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 8, eff. May 31, 1989. Amended by Acts 1991, 72nd Leg., ch. 905, Sec. 2, eff. June 16, 1991; Acts 1995, 74th Leg., ch. 315, Sec. 5, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 19, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1441, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 14.04, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 4, eff. Sept. 1, 2001.

Sec. 26.3513. LIABILITY AND COSTS: MULTIPLE OWNERS AND OPERATORS. (a) This section applies at a site where the owner and the operator are different persons or at a site where there is more than one underground storage tank, petroleum storage tank, or a combination of both.

(b) Each owner and operator of an underground storage tank or petroleum storage tank at a site to which this section applies and from which a release or threatened release occurs is responsible for taking all corrective action at the site which may be required under this subchapter; provided that liability for the expenses of corrective action among owners and operators may be apportioned as provided by this section.

(c) All owners and operators of underground storage tanks and petroleum storage tanks at a site to which this section applies shall attempt to negotiate a settlement among themselves as to the apportionment of expenses.

(d) If the owners and operators reach a settlement as to the apportionment of expenses on or before the 30th day from the date on which the commission issues an order requiring corrective action, they shall submit the settlement to the commission for review. If the commission approves the settlement, the parties shall be liable for the expenses of taking corrective action in accordance with the approved settlement. Any action for breach of contract on the settlement agreement shall be to the district court of Travis County.

(e) If the parties cannot reach a settlement by the 30th day after the commission issues its order, the commission shall file suit in the district court of Travis County. In its petition, the commission:

(1) shall request the court to apportion the expenses of corrective action among the owners and operators; and

(2) may request the court to award recovery of costs as provided by Section 26.355 of this code. In the alternative, the commission may file an action for recovery of costs at a later time.

(f) Where the owner or operator can prove by a preponderance of the evidence that liability for the expenses of taking corrective action in response to a release or threatened release is divisible, that person shall be liable for the expenses only to the extent that the impact to the groundwater, surface water, or subsurface soils is attributable to the release or threatened release from his underground storage tank or petroleum storage tank.

(g) The court may allocate corrective action costs among liable parties, using such equitable factors as the court determines are appropriate if the evidence is insufficient to establish each party's divisible portion of the liability for corrective action under Subsection (f) of this section and joint and several liability would impose undue hardship on the owners and operators.

(h) If the court apportions liability for the expenses of corrective action as provided by Subsection (f) or (g) of this section, cost recovery against the owners and operators shall be based on the apportionment.

(i) The commission may use the petroleum storage tank remediation account to take corrective action at any time before, during, or after the conclusion of apportionment proceedings commenced under this section.

(j) Any owner or operator of a petroleum storage tank at the site may voluntarily undertake such corrective action at the site as the commission may agree to or require. An owner or operator who undertakes corrective action pursuant to this subsection may have contribution against all other owners and operators with tanks at the site.

(k) Nothing in this section:

(1) prohibits the commission from using the waste management account to take corrective action as provided by this subchapter and having cost recovery for the waste management account;

or

(2) affects the assessment of administrative penalties by the commission for violations of this subchapter or rules or orders adopted thereunder.

(l) At the request of the commission, the attorney general shall file suit on behalf of the commission to seek the relief provided by this section.

(m) The commission shall consider the person who is in day-to-day control of a petroleum storage tank system at a site that is in violation of this subchapter to be the:

(1) person primarily responsible for taking corrective action, for corrective action costs, for receiving a notice of violation, or for paying a penalty assessed; and

(2) primary subject of an enforcement action or order under this subchapter.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 8, eff. May 31, 1989. Amended by Acts 1995, 74th Leg., ch. 315, Sec. 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 20, eff. Sept. 1, 1997.

Sec. 26.3514. LIMITS ON LIABILITY OF LENDER. (a) This section applies:

(1) to a lender that has a security or lienhold interest in an underground or aboveground storage tank, in real property on which an underground or aboveground storage tank is located, or in any other personal property attached to or located on property on which an underground or aboveground storage tank is located, as security for a loan to finance the acquisition or development of the property, to finance the removal, repair, replacement, or upgrading of the tank, or to finance the performance of corrective action in response to a release of a regulated substance from the tank; or

(2) to situations in which the real or personal property constitutes collateral for a commercial loan.

(b) A lender is not liable as an owner or operator under this subchapter solely because the lender holds indicia of ownership to protect a security or lienhold interest in property as described by Subsection (a) of this section.

(c) A lender that exercises control over a property before foreclosure to preserve the collateral or to retain revenues from the

property for the payment of debt, or that otherwise exercises the control of a mortgagee in possession, is not liable as an owner or operator under this subchapter unless that control leads to action that the commission finds is causing or exacerbating contamination associated with the release of a regulated substance from a tank located on the property.

(d) A lender that has a bona fide security or lienhold interest in any real or personal property as described by Subsection (a) of this section and that forecloses on or receives an assignment or deed in lieu of foreclosure and becomes the owner of that real or personal property is not liable as an owner or operator under this subchapter if the lender removes from service any underground or aboveground storage tanks on the property in accordance with commission rules and takes and with due diligence completes corrective action in response to any release from those tanks in accordance with commission rules. A lender shall begin removal or corrective action as prescribed by the commission within a reasonable time, as set by the commission, after the date on which the lender becomes the owner of the property, but not to exceed 90 days after that date.

(e) If a lender removes a tank from service or takes corrective action at any time before or after foreclosure, the lender shall perform corrective action in accordance with requirements adopted by the commission under this subchapter.

(f) A lender described by Subsection (a) is not liable as an owner or operator under this subchapter because the lender sells, releases, liquidates, or winds up operations and takes measures to preserve, protect, or prepare the secured aboveground or underground storage tank before sale or other disposition of the storage tank or the property if the lender:

(1) did not participate in the management of an aboveground or underground storage tank or real or personal property described by Subsection (a) before foreclosure or its equivalent on the storage tank or the property; and

(2) establishes, as provided by Subsection (g), that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest.

(g) A lender may establish that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest if, within 12 months after foreclosure, the lender:

(1) lists the aboveground or underground storage tank, or the facility or property on which the tank is located, with a broker, dealer, or agent who deals in that type of property; or

(2) advertises the aboveground or underground storage tank for sale or other disposition, at least monthly, in:

(A) a real estate publication;

(B) a trade or other publication appropriate for the aboveground or underground storage tank being advertised; or

(C) a newspaper of general circulation in the area in which the aboveground or underground storage tank is located.

(h) For purposes of Subsection (g), the 12-month period begins:

(1) when the lender acquires marketable title, if the lender, after the expiration of any redemption period or other waiting period required by law, was acting diligently to acquire marketable title; or

(2) on the date of foreclosure or its equivalent, if the lender does not act diligently to acquire marketable title.

(i) If a lender outbids, rejects, or does not act on an offer of fair consideration for the aboveground or underground storage tank or the facility or property on which the storage tank is located, it is presumed that the lender is not holding the ownership indicia primarily to protect the security interest unless the lender is required, in order to avoid liability under federal or state law, to make the higher bid, obtain the higher offer, or seek or obtain an offer in a different manner.

Added by Acts 1991, 72nd Leg., ch. 905, Sec. 3, eff. June 16, 1991.
Amended by Acts 1995, 74th Leg., ch. 315, Sec. 7, eff. Sept. 1, 1995.

Sec. 26.3515. LIMITS ON LIABILITY OF CORPORATE FIDUCIARY. (a) A corporate fiduciary or its agent is not liable in an individual capacity as an owner or operator of an underground or aboveground storage tank under this subchapter solely because:

(1) the corporate fiduciary or its agent has legal title to real or personal property for purposes of administering a trust or estate of which the property is a part; or

(2) the corporate fiduciary or its agent does not have legal title to the real or personal property but operates or manages the property under the terms of an estate or trust of which the

property is a part.

(b) Subsection (a) of this section does not relieve a trust, estate, or beneficiary of any liability the trust, estate, or beneficiary may have as an owner or operator under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 905, Sec. 3, eff. June 16, 1991.

Sec. 26.3516. LIMITS ON LIABILITY OF TAXING UNIT. (a) This section applies to a taxing unit that has foreclosed an ad valorem tax lien on real property on which an underground or aboveground storage tank is located, or on any other personal property attached to or located on property on which an underground or aboveground storage tank is located, as security for payment of ad valorem taxes.

(b) A taxing unit is not liable as an owner or operator under this subchapter solely because the taxing unit holds indicia of ownership because of a tax foreclosure sale under the Tax Code.

(c) If a taxing unit removes a tank from service or takes corrective action at any time after foreclosure, the taxing unit shall perform corrective action in accordance with requirements adopted by the commission under this subchapter.

(d) A taxing unit is not liable as an owner or operator under this subchapter solely because the taxing unit sells, releases, liquidates, or winds up operations and takes measures to preserve, protect, or prepare the secured aboveground or underground storage tank before sale or other disposition of the storage tank or the property if the taxing unit:

(1) did not participate in the management of an aboveground or underground storage tank or real or personal property described by Subsection (a) before foreclosure or an equivalent action on the storage tank or the property; and

(2) establishes, as provided by Subsection (e), that the ownership indicia maintained after foreclosure continue to be held primarily to protect a payment of ad valorem taxes.

(e) A taxing unit may establish that the ownership indicia maintained after foreclosure continue to be held primarily to protect payment of ad valorem taxes if the taxing unit:

(1) lists the aboveground or underground storage tank, or the facility or property on which the tank is located, with a broker, dealer, or agent who deals in that type of property; or

(2) advertises the aboveground or underground storage tank for sale or other disposition in:

(A) a real estate publication;

(B) a trade or other publication appropriate for the aboveground or underground storage tank being advertised; or

(C) a newspaper of general circulation in the area in which the aboveground or underground storage tank is located.

Added by Acts 1999, 76th Leg., ch. 895, Sec. 1, eff. Sept. 1, 1999.

Sec. 26.352. FINANCIAL RESPONSIBILITY. (a) The commission by rule shall adopt requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

(b) The rules must require that, after December 22, 1998, the owner or operator of a site for which a closure letter has been issued under Section 26.3572 shall have insurance coverage or evidence of financial responsibility sufficient to satisfy all financial responsibility requirements under federal law or regulations. The rules must require that an owner or operator of a site that has been issued a closure letter and who is eligible to have a portion of any future corrective action costs paid under Section 26.3512 shall have insurance coverage or evidence of financial responsibility sufficient to satisfy the first expenses for corrective action as provided by Section 26.3512(k).

(c) The commission shall seek the assistance of the Texas Department of Insurance in developing the minimum requirements for insurance coverage required under this section.

(d) A registration certificate issued by the commission under Section 26.346:

(1) may be submitted by an owner or operator of an underground storage tank to the United States Environmental Protection Agency as evidence of the owner's or operator's eligibility for funds for any expense for corrective action incurred for confirmed releases initially discovered and reported to the commission on or before December 22, 1998; and

(2) is not acceptable evidence of financial responsibility

for:

(A) an underground storage tank that contains a petroleum substance other than:

(i) a petroleum product; or

(ii) spent oil or hydraulic fluid if the tank is located at a vehicle service and fueling facility and is used as part of the operations of that facility; or

(B) any expenses for corrective action for confirmed releases initially discovered and reported to the commission after December 22, 1998.

(e) An owner or operator of an underground storage tank used for storing petroleum products shall submit annually with the compliance certification form required by Section 26.346 proof that the owner or operator maintains evidence of financial responsibility as required by Subsection (a).

(e-1) An insurance company or other entity that provides insurance coverage or another form of financial assurance to an owner or operator of an underground storage tank for purposes of this section shall notify the commission if the insurance coverage or other financial assurance is canceled or not renewed. The insurance company or other entity shall mail, fax, or e-mail notice not later than the 30th day after the date the coverage terminates. The Texas Department of Insurance shall adopt rules to implement and enforce this subsection.

(e-2) The owner or operator of a tank for which insurance coverage or other financial assurance has terminated shall dispose of any regulated substance in the tank at a properly licensed facility not later than the 90th day after the coverage terminates, unless the owner or operator provides the commission proof that the owner or operator maintains evidence of financial responsibility as required under Subsection (a).

(f) The commission shall enforce this section and may impose administrative and civil penalties on the owners or operators of underground storage tanks if acceptable evidence of financial responsibility is not maintained. The amount of an administrative or civil penalty imposed under this subsection may not be less than the annual cost, as estimated by the commission, of maintaining the minimum insurance coverage required for the tank as determined under Subsection (c).

(g) An owner or operator commits an offense if the owner or

operator operates an underground storage tank knowing that acceptable evidence of financial responsibility does not exist and is subject to criminal prosecution as provided by Subchapter F.

(h) The commission may seek injunctive relief in the district courts of Travis County to force the temporary or permanent closure of an underground storage tank for which acceptable evidence of financial responsibility is not maintained.

(i) The commission may order an owner or operator of an underground storage tank that fails to maintain acceptable evidence of financial responsibility to place the tank out of service in the same manner that the commission may issue such an order under Section 26.3475(e).

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 228, Sec. 9, eff. May 31, 1989; Acts 1995, 74th Leg., ch. 315, Sec. 8, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 177 (H.B. 1956), Sec. 1, eff. September 1, 2007.

Sec. 26.354. EMERGENCY ORDERS. The commission may issue an emergency order to an owner or operator of an underground or aboveground storage tank under Section 5.510.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 228, Sec. 11, eff. May 31, 1989; Acts 1997, 75th Leg., ch. 1072, Sec. 22, eff. Sept. 1, 1997.

Sec. 26.355. RECOVERY OF COSTS. (a) If the commission has incurred any costs in undertaking corrective action or enforcement action with respect to the release of regulated substances from an underground or aboveground storage tank, the owner or the operator of the tank is liable to the state for all reasonable costs of those corrective and enforcement actions and for court costs and reasonable attorney's fees.

(b) An owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless:

(1) the release was caused by:

(A) an act of God;

(B) an act of war;

(C) the negligence of the State of Texas or the United States; or

(D) an act or omission of a third party; or

(2) the site at which the release occurred has been admitted into the petroleum storage tank state-lead program under Section 26.3573(r-1).

(c) The state's right to recover under this section arises whether or not the commission:

(1) uses funds from the waste management account or the petroleum storage tank remediation account; or

(2) receives or will receive funds from the state, the federal government, or any other source for the purpose of corrective action or enforcement.

(d) If the commission uses money from the petroleum storage tank remediation account for corrective action or enforcement and if the costs are recovered under this section, the commission may not recover more than the amount of the applicable owner or operator contribution described by Section 26.3512 of this code from an eligible owner or operator for corrective action for each occurrence. However, this limitation is not applicable to cost recovery actions initiated by the executive director at sites where the executive director has determined that the owner or operator is in violation of Section 26.351(f).

(e) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer the liability imposed under this section from the owner or operator of an underground or aboveground storage tank or from a person who may be liable for a release or threat of release to any other person. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any liability under this section.

(f) This section does not bar a cause of action that an owner or operator or any other person subject to liability under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(g) At the request of the commission, the attorney general shall initiate court proceedings to recover costs under this section.

(h) Except as provided by Subsection (i) of this section, money recovered in a court proceeding under this section shall be deposited

in the State Treasury to the credit of the waste management account.

(i) If the commission uses money from the petroleum storage tank remediation account for corrective action or enforcement as provided by this subchapter, money recovered in a court proceeding under this section shall be deposited in the state treasury to the credit of the petroleum storage tank remediation account.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 228, Sec. 12, eff. May 31, 1989; Acts 1991, 72nd Leg., ch. 905, Sec. 4, eff. June 16, 1991; Acts 1997, 75th Leg., ch. 333, Sec. 21, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 14.05, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. 485), Sec. 5, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 5.02, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1256 (H.B. 1987), Sec. 5, eff. September 1, 2005.

Sec. 26.356. INSPECTIONS, MONITORING, AND TESTING. (a) For the purposes of developing or assisting in the development of a regulation, conducting a study, or enforcing this subchapter, an owner or operator of an underground or aboveground storage tank, on the request of the commission, shall:

(1) furnish information relating to the tank, including tank equipment and contents; and

(2) permit a designated agent or employee of the commission at all reasonable times to have access to and to copy all records relating to the tank.

(b) For the purposes of developing or assisting in the development of a regulation, conducting a study, or enforcing this subchapter, the commission, its designated agent, or employee may:

(1) enter at reasonable times an establishment or place in which an underground or aboveground storage tank is located;

(2) inspect and obtain samples of a regulated substance contained in the tank from any person; and

(3) conduct monitoring or testing of the tank, associated

equipment, contents, or surrounding soils, air, surface water, or groundwater.

(c) The commission may order an owner or an operator of an underground or aboveground storage tank to conduct monitoring and testing if the commission finds that there is reasonable cause to believe that a release has occurred in the area in which the underground or aboveground storage tank is located.

(d) Each inspection made under this section must be begun and completed with reasonable promptness. Before a designated agent or employee of the commission enters private property to carry out a function authorized under this section, the agent or employee must give reasonable notice and exhibit proper identification to the manager or owner of the property or to another appropriate person, as provided by commission rule. The commission's designated agent or employee must observe the regulations of the establishment being inspected, including regulations regarding safety, internal security, and fire protection.

Added by Acts of 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 228, Sec. 13, eff. May 31, 1989.

Sec. 26.357. STANDARDS AND RULES. (a) Standards and rules concerning underground storage tanks adopted by the commission under this subchapter must be at least as stringent as the federal requirements under Title VI of the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. Section 6901 et seq.).

(b) The commission may not impose standards or rules more stringent than the federal requirements unless the commission determines that more stringent standards or rules are necessary to protect human health or the environment.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 228, Sec. 14, eff. May 31, 1989.

Sec. 26.3571. ELIGIBLE OWNER OR OPERATOR. (a) The commission by rule shall establish criteria to be met by a person to qualify as an eligible owner or operator.

(b) To be an eligible owner or operator for purposes of this

subchapter, a person must not have missed any of the deadlines described in Section 26.351(f) and must:

(1) be one of the following:

(A) an owner or operator of a petroleum storage tank that is subject to regulation under this subchapter;

(B) an owner of land that can clearly prove that the land has been contaminated by a release of petroleum products from a petroleum storage tank that is subject to regulation under this subchapter, whether or not the tank is still attached to that land; or

(C) a lender that has a bona fide security or lienhold interest in or mortgage lien on any property contaminated by the release of petroleum products from a petroleum storage tank subject to regulation under this subchapter, or that forecloses on or receives an assignment or deed in lieu of foreclosure and becomes the owner of such property;

(2) be in compliance with this subchapter as determined by the commission; and

(3) meet qualifying criteria established by the commission under Subsection (a) of this section.

(c) The commission by rule may prescribe special conditions, consistent with the objective of formulating an overall plan for remediation of an entire contaminated site, for designating as an eligible owner:

(1) a person described by Subsection (b)(1)(B) of this section who owns land contaminated by a release of petroleum products from a tank that was or is located on property the person does not own; or

(2) a lender described by Subsection (b)(1)(C) of this section.

(d) In determining whether an owner or operator is in compliance with this subchapter, the commission may consider such factors as the owner's or operator's compliance with tank registration, release detection and reporting, and corrective action requirements.

(e) The commission shall designate a person as an eligible owner or operator for purposes of this subchapter as provided by this section.

(f) The commission may not establish any requirements for eligibility under this section that are not consistent with this

subchapter or with federal law and federal regulations.

(g) An otherwise eligible owner or operator who misses a deadline referenced in Subsection (b) shall be considered ineligible for reimbursement under this subchapter.

(h) Nothing in this section reduces the liability to perform corrective action created under Section 26.351 and other parts of this subchapter.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 15, eff. May 31, 1989. Amended by Acts 1991, 72nd Leg., ch. 905, Sec. 5, eff. June 16, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 14.06, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 6, eff. Sept. 1, 2001.

Sec. 26.3572. GROUNDWATER PROTECTION CLEANUP PROGRAM. (a) The groundwater protection cleanup program is established, and the commission shall administer that program.

(b) In administering the program, the commission shall:

(1) negotiate with or direct responsible parties in site assessment and remediation matters using risk-based corrective action;

(2) approve site-specific corrective action plans for each site as necessary, using risk-based corrective action;

(3) review and inspect site assessment and remedial activities and reports;

(4) use risk-based corrective action procedures as determined by commission rule to establish cleanup levels;

(5) adopt by rule criteria for assigning a priority to each site using risk-based corrective action and assign a priority to each site according to those criteria;

(6) adopt by rule criteria for:

(A) risk-based corrective action site closures; and

(B) the issuance of a closure letter to the owner or operator of a tank site on completion of the commission's corrective action requirements; and

(7) process claims for petroleum storage tank remediation account disbursement in accordance with this subchapter.

(c) The commission by rule may approve site assessment methodologies. The commission shall approve or disapprove a site assessment or corrective action plan, as defined by commission rule,

on or before the 30th day after the commission receives the assessment or plan. The commission shall adopt by rule criteria to be used to determine:

(1) the necessity for site assessment; and

(2) the nature of the site assessment required.

(d) The commission may not approve a corrective action plan until the commission and the owner or operator of the site by agreement set specific goals in the plan for completing discrete corrective action tasks before specified dates. The owner or operator is responsible for meeting the goals.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 16, eff. May 31, 1989. Amended by Acts 1995, 74th Leg., ch. 315, Sec. 9, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 22, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 14.07, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 7, eff. Sept. 1, 2001.

Sec. 26.3573. PETROLEUM STORAGE TANK REMEDIATION ACCOUNT. (a) The petroleum storage tank remediation account is an account in the general revenue fund. The commission shall administer the account in accordance with this subchapter.

(b) The petroleum storage tank remediation account consists of money from:

(1) fees charged under Section 26.3574 of this code;

(2) the interest and penalties for the late payment of the fee charged under Section 26.3574 of this code;

(3) funds received from cost recovery for corrective action and enforcement actions concerning petroleum storage tanks as provided by this subchapter; and

(4) temporary cash transfers and other transfers from the general revenue fund authorized by Section 403.092(c), Government Code.

(c) Interest earned on amounts in the petroleum storage tank remediation account shall be credited to the general revenue fund.

(d) The commission may use the money in the petroleum storage tank remediation account to pay:

(1) necessary expenses associated with the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program;

(2) expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release from a petroleum storage tank, whether those expenses are incurred by the commission or pursuant to a contract between a contractor and an eligible owner or operator as authorized by this subchapter;

(3) subject to the conditions of Subsection (f), expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release of hydraulic fluid or spent oil from hydraulic lift systems or tanks located at a vehicle service and fueling facility and used as part of the operations of that facility;

(4) expenses associated with assuring compliance with the commission's applicable underground or aboveground storage tank administrative and technical requirements, including technical assistance and support, inspections, enforcement, and the provision of matching funds for grants; and

(5) expenses associated with investigation, cleanup, or corrective action measures performed under Section 26.351(c-1).

(e) To consolidate appropriations, the commission may transfer from the petroleum storage tank remediation account to the waste management account an amount equal to the amounts authorized under Subsections (d)(1) and (4), subject to the requirements of those subsections.

(f) The commission may pay from the account expenses under Subsection (d)(3) of this section, whether or not the hydraulic fluid or spent oil contamination is mixed with petroleum product contamination, but the commission may require an eligible owner or operator to demonstrate that the release of spent oil is not mixed with any substance except:

(1) hydraulic fluid from a hydraulic lift system;

(2) petroleum products from a petroleum storage tank system; or

(3) another substance that was contained in the hydraulic lift system or the spent oil tank owned or operated by the person claiming reimbursement.

(g) The commission, in accordance with this subchapter and rules adopted under this subchapter, may:

(1) contract directly with a person to perform corrective action and pay the contractor from the petroleum storage tank

remediation account;

(2) reimburse an eligible owner or operator from the petroleum storage tank remediation account for the expenses of a corrective action that was:

(A) performed on or after September 1, 1987; and

(B) conducted in response to a confirmed release that was initially discovered and reported to the commission on or before December 22, 1998; or

(3) pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action with funds from the petroleum storage tank remediation account.

(h) The commission shall administer the petroleum storage tank remediation account and by rule adopt guidelines and procedures for the use of and eligibility for that account, subject to the availability of money in that account, as the commission finds necessary to:

(1) make the most efficient use of the money available, including:

(A) establishing priorities for payments from the account; and

(B) suspending payments from the account; and

(2) provide the most effective protection to the environment and provide for the public health and safety.

(i) Consistent with the objectives provided under Subsection (h) of this section and this subchapter, the commission may by rule adopt:

(1) guidelines the commission considers necessary for determining the amounts that may be paid from the petroleum storage tank remediation account; and

(2) guidelines concerning reimbursement for expenses incurred by an eligible owner or operator and covered under Section 26.3512(d) of this code.

(j) Repealed by Acts 2001, 77th Leg., ch. 880, Sec. 25(1), eff. Sept. 1, 2001.

(k) The commission shall hear any complaint regarding the payment of a claim from the petroleum storage tank remediation account arising from a contract between a contractor and an eligible owner or operator. A hearing held under this subsection shall be conducted in accordance with the procedures for a contested case under Chapter 2001, Government Code. An appeal of a commission

decision under this subsection shall be to the district court of Travis County and the substantial evidence rule applies.

(l) The commission shall satisfy a claim for payment that is eligible to be paid under this subchapter and the rules adopted under this subchapter made by a contractor, from the petroleum storage tank remediation account as provided by this section and rules adopted by the commission under this section, regardless of whether the commission:

(1) contracts directly for the goods or services; or

(2) pays a claim under a contract executed by a petroleum storage tank owner or operator.

(m) The commission may use any amount up to $1 million from the petroleum storage tank remediation account to pay expenses associated with the corrective action for each occurrence taken in response to a release from a petroleum storage tank.

(n) The petroleum storage tank remediation account may not be used for corrective action taken in response to a release from an underground storage tank if the sole or principal substance in the tank is a hazardous substance.

(o) The petroleum storage tank remediation account may be used to pay for corrective action in response to a release whether the action is taken inside or outside of the boundaries of the property on which the leaking petroleum storage tank is located.

(p) The petroleum storage tank remediation account may not be used to compensate third parties for bodily injury or property damage.

(q) Notwithstanding any other law to the contrary, an owner or operator, or an agent of an owner or operator, is not entitled to and may not be paid interest on any claim for payment from the petroleum storage tank remediation account.

(r) Except as provided by Subsection (r-1), the petroleum storage tank remediation account may not be used to reimburse any person for corrective action performed after September 1, 2005.

(r-1) In this subsection, "state-lead program" means the petroleum storage tank state-lead program administered by the commission. The executive director shall grant an extension for corrective action reimbursement to a person who is an eligible owner or operator under Section 26.3571. The petroleum storage tank remediation account may be used to reimburse an eligible owner or operator for corrective action performed under an extension before

August 31, 2011. Not later than July 1, 2011, an eligible owner or operator who is granted an extension under this subsection may apply to the commission in writing using a form provided by the commission to have the site subject to corrective action placed in the state-lead program. The eligible owner or operator must agree in the application to allow site access to state personnel and state contractors as a condition of placement in the state-lead program under this subsection. On receiving the application for placement in the state-lead program under this subsection, the executive director by order shall place the site in the state-lead program until the corrective action is completed to the satisfaction of the commission. An eligible owner or operator of a site that is placed in the state-lead program under this subsection is not liable to the commission for any costs related to the corrective action.

(s) The petroleum storage tank remediation account may not be used to reimburse any person for corrective action contained in a reimbursement claim filed with the commission after March 1, 2012.

(t) The commission may prohibit the use of the petroleum storage tank remediation account to pay for corrective action if the action is taken by:

(1) a contractor who is not registered under Section 26.364; or

(2) a supervisor who is not licensed under Section 26.366.

(u) The petroleum storage tank remediation account may not be used to pay for a site remediation that involves the installation or construction of on-site equipment, structures, or systems used in the extraction or management of wastes, except for soil excavation and landfill disposal or well sampling and monitoring, unless:

(1) the plans and specifications for the equipment, structures, or systems are sealed by an engineer licensed by the Texas Board of Professional Engineers and Land Surveyors; and

(2) the equipment, structures, or systems are constructed under the supervision of an engineer licensed by the Texas Board of Professional Engineers and Land Surveyors.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 16, eff. May 31, 1989. Amended by Acts 1991, 72nd Leg., ch. 905, Sec. 6, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 533, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(8), (49) eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 315, Sec. 10, eff. Sept. 1, 1995; Acts 1997,

75th Leg., ch. 333, Sec. 23, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1442, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 880, Sec. 8, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 14.08, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 8, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1275, Sec. 2(145), (146), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. 485), Sec. 6, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 5.04, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1256 (H.B. 1987), Sec. 6, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1109 (H.B. 3554), Sec. 2, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1109 (H.B. 3554), Sec. 2, eff. August 27, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.18, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.15, eff. September 1, 2019.

Sec. 26.35731. CONSIDERATION AND PROCESSING OF APPLICATIONS FOR REIMBURSEMENT. (a) Except as provided by Subsection (b), the commission shall consider and process a claim by an eligible owner or operator for reimbursement from the petroleum storage tank remediation account in the order in which it is received. The commission shall consider and process all claims by eligible owners and operators for reimbursement from the account that were received before September 1, 1995, before the commission considers a claim received after that date.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 722 (S.B. 485), Sec. 7

(b) The commission may postpone considering, processing, or paying a claim for reimbursement from the petroleum storage tank remediation account for corrective action work begun without prior commission approval after September 1, 1993, that is filed with the commission before January 1, 2005.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 899 (S.B. 1863), Sec. 5.03

(b) The commission has discretion whether to postpone considering, processing, or paying a claim for reimbursement from the petroleum storage tank remediation account for corrective action work begun without prior commission approval after September 1, 1993, and filed with the commission prior to January 1, 2005.

(c) Not later than the 90th day after the date on which the commission receives a completed application for reimbursement from the petroleum storage tank remediation account, the commission shall send a fund payment report to the owner or operator of a petroleum storage tank system that is seeking reimbursement, if sufficient funds are available to make the payment.

Added by Acts 1995, 74th Leg., ch. 315, Sec. 11, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 333, Sec. 24, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1441, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 200, Sec. 6(b), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. 485), Sec. 7, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 5.03, eff. September 1, 2005.

Sec. 26.35735. CLAIMS AUDIT. (a) The commission annually shall audit claims for payment from the petroleum storage tank remediation account.

(b) The commission shall conduct the audit in accordance with generally accepted accounting standards as prescribed by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, the United States General Accounting Office, or other professionally recognized entities that prescribe auditing standards.

(c) The commission may use generally recognized sampling techniques to audit claims if the commission determines that the use of those techniques would be cost-effective and would promote greater efficiency in administering claims for payment from the petroleum storage tank remediation account.

(d) The commission may adopt rules necessary to implement this

section.

(e) The commission may audit a claim for payment as required by this section only:

(1) under guidelines adopted by commission rule that relate to conducting an audit under this section and denying a claim as a result of that audit and that are in effect when the audit is conducted; or

(2) in a case of suspected fraud.

(f) Not later than the 90th day after an audit under this section has been completed, the commission shall send a copy of the audit to the person whose claim for payment is the subject of the audit.

Added by Acts 1993, 73rd Leg., ch. 533, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 315, Sec. 12, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 25, eff. Sept. 1, 1997.

Sec. 26.3574. FEE ON DELIVERY OF CERTAIN PETROLEUM PRODUCTS. (a) In this section:

(1) "Bulk facility" means a facility in this state, including pipeline terminals, refinery terminals, rail and barge terminals, and associated underground and aboveground tanks, connected or separate, from which petroleum products are withdrawn from bulk and delivered into a cargo tank or a barge used to transport those products. This term does not include petroleum products consumed at an electric generating facility.

(2) "Cargo tank" means an assembly that is used for transporting, hauling, or delivering liquids and that consists of a tank having one or more compartments mounted on a wagon, truck, trailer, railcar, or wheels.

(2-a) "Supplier" has the meaning assigned by Section 162.001, Tax Code.

(3) "Withdrawal from bulk" means the removal of a petroleum product from a bulk facility storage tank for delivery directly into a cargo tank or a barge to be transported to another location other than another bulk facility for distribution or sale in this state.

(b) A fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection. Each supplier on withdrawal from bulk of a petroleum product shall

collect from the person who orders the withdrawal a fee in an amount determined as follows:

(1) not more than $3.75 for each delivery into a cargo tank having a capacity of less than 2,500 gallons;

(2) not more than $7.50 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons;

(3) not more than $11.75 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons;

(4) not more than $15.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons; and

(5) not more than $7.50 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more.

(b-1) The commission by rule shall set the amount of the fee in Subsection (b) in an amount not to exceed the amount necessary to cover the agency's costs of administering this subchapter, as indicated by the amount appropriated by the legislature from the petroleum storage tank remediation account for that purpose, not including any amount appropriated by the legislature from the petroleum storage tank remediation account for the purpose of the monitoring or remediation of releases occurring on or before December 22, 1998.

(c) The fee collected under Subsection (b) of this section shall be computed on the net amount of a petroleum product delivered into a cargo tank.

(d) A person who imports a petroleum product in a cargo tank or a barge destined for delivery into an underground or aboveground storage tank, regardless of whether or not the tank is exempt from regulation under Section 26.344, other than a storage tank connected to or part of a bulk facility in this state, shall pay to the comptroller a fee on the number of gallons imported, computed as provided by Subsections (b) and (c). If a supplier imports a petroleum product in a cargo tank or a barge, the supplier is not required to pay the fee on that imported petroleum product if the petroleum product is delivered to a bulk facility from which the petroleum product will be withdrawn from bulk.

(e) A supplier who receives petroleum products on which the fee

has been paid may take credit for the fee paid on monthly reports.

(f) Subsection (b) does not apply to a delivery of a petroleum product destined for export from this state if the petroleum product is in continuous movement to a destination outside this state. For purposes of this subsection, a petroleum product ceases to be in continuous movement to a destination outside this state if the product is delivered to a destination in this state. The person that directs the delivery of the product to a destination in this state shall pay the fee imposed by this section on that product.

(g) Each supplier and each person covered by Subsection (d) shall file an application with the comptroller for a permit to deliver a petroleum product into a cargo tank destined for delivery to an underground or aboveground storage tank, regardless of whether or not the tank is exempt from regulation under Section 26.344. A permit issued by the comptroller under this subsection is valid on and after the date of its issuance and until the permit is surrendered by the holder or canceled by the comptroller. An applicant for a permit issued under this subsection must use a form adopted or approved by the comptroller that contains:

(1) the name under which the applicant transacts or intends to transact business;

(2) the principal office, residence, or place of business in this state of the applicant;

(3) if the applicant is not an individual, the names of the principal officers of an applicant corporation, or the name of the member of an applicant partnership, and the office, street, or post office address of each; and

(4) any other information required by the comptroller.

(h) A permit must be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. A copy of the permit must be kept at each place of business or other place of storage from which petroleum products are delivered into cargo tanks and in each motor vehicle used by the permit holder to transport petroleum products by him for delivery into petroleum storage tanks in this state.

(i) Each supplier and each person covered by Subsection (d) shall:

(1) list, as a separate line item on an invoice or cargo manifest required under this section, the amount of the delivery fee due under this section; and

(2) on or before the 25th day of the month following the end of each calendar month, file a report with the comptroller and remit the amount of fees required to be collected or paid during the preceding month.

(j) Each supplier or the supplier's representative and each person covered by Subsection (d) shall prepare the report required under Subsection (i) on a form provided or approved by the comptroller.

(k) The cargo manifests or invoices or copies of the cargo manifests or invoices and any other records required under this section or rules of the comptroller must be maintained for a period of four years after the date on which the document or other record is prepared and be open for inspection by the comptroller at all reasonable times.

(l) As provided by the rules of the comptroller, the owner or lessee of a cargo tank or a common or contract carrier transporting a petroleum product shall possess a cargo manifest or an invoice showing the delivery point of the product, the amount of the required fee, and other information as required by rules of the comptroller.

(m) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(n) A person who fails to file a report as provided by Subsection (i) of this section or who possesses a fee collected or payable under this section and who fails to remit the fee to the comptroller at the time and in the manner required by this section and rules of the comptroller shall pay a penalty of five percent of the amount of the fee due and payable. If the person fails to file the report or pay the fee before the 30th day after the date on which the fee or report is due, the person shall pay a penalty of an additional five percent of the amount of the fee due and payable.

(o) Chapters 101 and 111-113, and Sections 162.005, 162.007, and 162.111(b)-(k), Tax Code, apply to the administration, payment, collection, and enforcement of fees under this section in the same manner that those chapters apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(p) The comptroller may add a penalty of 75 percent of the amount of the fee, penalty, and interest due if failure to file the report or pay the fee when it comes due is attributable to fraud or an intent to evade the application of this section or a rule made

under this section or Chapter 111, Tax Code.

(q) The comptroller may require a bond or other security from a permittee and may establish the amount of the bond or other security.

(r) A person forfeits to the state a civil penalty of not less than $25 nor more than $200 if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting petroleum products on demand of a peace officer or the comptroller;

(2) fails or refuses to comply with or violates a provision of this section; or

(3) fails or refuses to comply with or violates a comptroller's rule for administering or enforcing this section.

(s) A person commits an offense if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting petroleum products on the demand of a peace officer or the comptroller;

(2) makes a delivery of petroleum products into cargo tanks on which he knows the fee is required to be collected, if at the time the delivery is made he does not hold a valid permit issued under this section;

(3) makes a delivery of petroleum products imported into this state on which he knows a fee is required to be collected, if at the time the delivery is made he does not hold a valid permit issued under this section;

(4) refuses to permit the comptroller or the attorney general to inspect, examine, or audit a book or record required to be kept by any person required to hold a permit under this section;

(5) refuses to permit the comptroller or the attorney general to inspect or examine any plant, equipment, or premises where petroleum products are stored or delivered into cargo tanks;

(6) refuses to permit the comptroller or the attorney general to measure or gauge the contents of or take samples from a storage tank or container on premises where petroleum products are stored or delivered into cargo tanks;

(7) is required to hold a permit under this section and fails or refuses to make or deliver to the comptroller a report required by this section to be made and delivered to the comptroller;

(8) refuses, while transporting petroleum products, to stop the motor vehicle he is operating when called on to do so by a person authorized to stop the motor vehicle;

(9) transports petroleum products for which a cargo manifest is required to be carried without possessing or exhibiting on demand by an officer authorized to make the demand a cargo manifest containing the information required to be shown on the manifest;

(10) mutilates, destroys, or secretes a book or record required by this section to be kept by any person required to hold a permit under this section;

(11) is required to hold a permit under this section or is the agent or employee of that person and makes a false entry or fails to make an entry in the books and records required under this section to be made by the person;

(12) transports in any manner petroleum products under a false cargo manifest;

(13) engages in a petroleum products transaction that requires that the person have a permit under this section without then and there holding the required permit;

(14) makes and delivers to the comptroller a report required under this section to be made and delivered to the comptroller, if the report contains false information;

(15) forges, falsifies, or alters an invoice or manifest prescribed by law; or

(16) fails to remit any fees collected by any person required to hold a permit under this section.

(t) The following criminal penalties apply to the offenses enumerated in Subsection (s) of this section:

(1) an offense under Subdivision (1) is a Class C misdemeanor;

(2) an offense under Subdivisions (2) through (7) is a Class B misdemeanor;

(3) an offense under Subdivisions (8) and (9) is a Class A misdemeanor;

(4) an offense under Subdivisions (10) through (15) is a felony of the third degree;

(5) an offense under Subdivision (16) is a felony of the second degree; and

(6) violations of three or more separate offenses under Subdivisions (10) through (15) committed pursuant to one scheme or continuous course of conduct may be considered as one offense and are punished as a felony of the second degree.

(u) The court may not fine a corporation or association under Section 12.51(c), Penal Code, unless the amount of the fine under that subsection is greater than the amount that could be fixed by the court under Section 12.51(b), Penal Code.

(v) In addition to a sentence imposed on a corporation, the court shall give notice of the conviction to the attorney general as required by Article 17A.09, Code of Criminal Procedure.

(w) The comptroller shall deduct two percent of the amount collected under this section as the state's charge for its services and shall credit the amount deducted to the general revenue fund. The balance of the fees, penalties, and interest collected by the comptroller shall be deposited in the state treasury to the credit of the petroleum storage tank remediation account.

(x) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(6), eff. September 1, 2019.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 17, eff. May 31, 1989. Amended by Acts 1995, 74th Leg., ch. 315, Sec. 13, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 26, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1442, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 14.09, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 9, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 5.05, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1109 (H.B. 3554), Sec. 3, eff. August 27, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1227 (S.B. 1495), Sec. 40, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.19, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 44, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 601 (S.B. 1557), Sec. 11, eff. January 1, 2018.

Acts 2017, 85th Leg., R.S., Ch. 601 (S.B. 1557), Sec. 12, eff. January 1, 2018.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(6), eff. September 1, 2019.

For expiration of this section, see Subsection (e).

Sec. 26.35745. REPORT ON CORRECTIVE ACTIONS FOR PETROLEUM CONTAMINATED SITES AND FEES NECESSARY TO CONCLUDE PROGRAM. (a) The commission annually shall prepare a report regarding the status of corrective actions for sites reported to the commission under this subchapter as having had a release needing corrective action. The commission must issue the report to the legislature on or before November 1 of each year.

(b) Regarding sites reported to the commission under this subchapter as having had a release needing corrective action on or before December 22, 1998, and that remain in the commission's PST State-Lead Program on September 1, 2013, the report must include:

(1) the total number of sites;

(2) the total number of sites for which corrective action is ongoing;

(3) the total number of sites monitored;

(4) the projected costs of the corrective actions;

(5) the projected costs of monitoring;

(6) a projected timeline for issuing closure letters under this subchapter for all of the sites; and

(7) for each site, the corrective action activities proposed and completed during the preceding state fiscal year.

(c) Regarding sites reported to the commission under this subchapter as having had a release needing corrective action after December 22, 1998, for which the commission has elected to assume responsibility for undertaking corrective action under this subchapter, the report must include:

(1) the current status of each site;

(2) the costs associated with the corrective action activities performed during the preceding state fiscal year for the sites;

(3) amounts recovered under Section 26.355 related to the sites; and

(4) enforcement actions taken against owners and operators related to those sites.

(d) The commission shall investigate the amount of fees that would be necessary to cover the costs necessary to conclude the programs and activities under this subchapter before September 1, 2021. The commission shall include in the annual report under this section the conclusions of the investigation and the commission's

recommendations regarding the fees and programs and activities.

(e) This section expires September 1, 2021.

Added by Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 18, eff. June 14, 2013.

Sec. 26.358. COLLECTION, USE, AND DISPOSITION OF STORAGE TANK FEES AND OTHER REVENUES. (a) Revenues collected by the commission under this section shall be deposited to the credit of the waste management account.

(b) Under this subchapter, the commission may collect:

(1) fees imposed on facilities with underground or aboveground storage tanks used for the storage of regulated substances;

(2) the interest and penalties imposed under this section for the late payment of those fees;

(3) funds received from cost recovery for corrective and enforcement actions taken under this subchapter, except as provided by Subsection (c) of this section;

(4) funds received from insurers, guarantors, or other sources of financial responsibility; and

(5) funds from the federal government and other sources for use in connection with the storage tank program.

(c) If the commission uses money from the petroleum storage tank remediation account for corrective action or enforcement as provided by this subchapter, money recovered in a court proceeding under Section 26.355 of this code shall be deposited in the state treasury to the credit of the petroleum storage tank remediation account.

(d) The commission shall impose an annual facility fee on a facility that operates one or more underground or aboveground storage tanks if the fee charged under Section 26.3574 is discontinued. The commission may also impose reasonable interest and penalties for late payment of the fee as provided by commission rule. The commission may establish a fee schedule that will generate an amount of money sufficient to fund the commission's budget for the regulatory program regarding underground and aboveground storage tanks authorized by this subchapter.

(e) Under this subchapter, the commission may use money in the

waste management account to:

(1) pay the costs of taking corrective action;

(2) provide matching funds for grants and to fund contracts executed under this subchapter; and

(3) pay for administrative expenses, rules development, enforcement, monitoring, and inspection costs, and other costs incurred in the course of carrying out the purposes and duties of this subchapter.

(f) The amount of an annual fee that the commission may impose on a facility under Subsection (d) is equal to the amount set by the commission for each aboveground storage tank and for each underground storage tank operated at the facility.

(g) The commission shall collect any fees imposed under this section on dates set by commission rule. The period between collection dates may not exceed two years.

(h) The commission shall adopt rules necessary to administer this section.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 228, Sec. 18, eff. May 31, 1989; Acts 1997, 75th Leg., ch. 333, Sec. 27, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1109 (H.B. 3554), Sec. 4, eff. August 27, 2007.

Sec. 26.359. LOCAL REGULATION OR ORDINANCE. (a) In this section, "local government" means a school district, county, municipality, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state.

(b) A regulation or ordinance adopted by a local government that imposes standards for the design, construction, installation, or operation of underground storage tanks is not valid.

Text of subsec. (c) as amended by Acts 2001, 77th Leg., ch. 965, Sec. 14.10

(c) This section does not apply to a regulation or ordinance in effect as of January 1, 2001.

Text of subsec. (c) as amended by Acts 2001, 77th Leg., ch. 966, Sec. 11.02

(c) This section does not apply to a rule adopted by the Edwards Aquifer Authority, or to a regulation or ordinance in effect as of January 1, 2001, or thereafter amended.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 14.10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 966, Sec. 11.02, eff. Sept. 1, 2001.

Sec. 26.360. PRIVATIZATION OF PROGRAM. Notwithstanding other provisions of this subchapter, the commission by rule may authorize the privatization of any part of the program established under this subchapter.

Added by Acts 1995, 74th Leg., ch. 315, Sec. 14, eff. Sept. 1, 1995.

Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM. Notwithstanding any other provision of this subchapter, the reimbursement program established under this subchapter expires September 1, 2012. On or after September 1, 2012, the commission may not use money from the petroleum storage tank remediation account to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action.

Added by Acts 1995, 74th Leg., ch. 315, Sec. 14, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 333, Sec. 28, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1442, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 14.10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 10, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. 485), Sec. 8, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 5.06, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1256 (H.B. 1987), Sec. 7, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1109 (H.B. 3554), Sec. 5, eff. August 27, 2007.

Sec. 26.362. SUIT TO TEST VALIDITY OF CLOSURE LETTER. The commission is immune from liability in any action against the commission to test the validity of a closure letter issued under Section 26.3572 if the letter is issued in accordance with commission rules.

Added by Acts 1995, 74th Leg., ch. 315, Sec. 14, eff. Sept. 1, 1995.

Sec. 26.363. RELIANCE ON CLOSURE LETTER. An owner or operator to whom a closure letter for a site has been issued under Section 26.3572 may not be held liable for the owner's or operator's conduct taken in reliance on and within the scope of the closure letter.

Added by Acts 1995, 74th Leg., ch. 315, Sec. 14, eff. Sept. 1, 1995.

Sec. 26.364. REGISTRATION OF PERSONS WHO CONTRACT TO PERFORM CORRECTIVE ACTION. (a) The commission may implement a program under Chapter 37 to register persons who contract to perform corrective action under this subchapter.

(b) The commission, on the request of an engineer licensed by the Texas Board of Professional Engineers and Land Surveyors, shall register the engineer in the program.

(c) An engineer registered in the program may contract to perform corrective action under this subchapter unless the Texas Board of Professional Engineers and Land Surveyors determines the engineer is not qualified to perform a corrective action.

(d) An engineer registered under this section is not subject to the commission's examination or continuing education requirements, fees, or disciplinary procedures.

(e) The commission may not adopt minimum qualifications for an engineer licensed by the Texas Board of Professional Engineers and Land Surveyors to contract with an eligible owner or operator to perform a corrective action under this subchapter.

(f) Any qualified contractor registered under Chapter 37 may conduct the characterization, study, appraisal, or investigation of a site.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 9, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.16, eff. September 1, 2019.

Sec. 26.365. REGISTRATION OF GEOSCIENTISTS WHO CONTRACT TO PERFORM CORRECTIVE ACTION. (a) In administering the program implemented under Section 26.364(a), the commission, on the request of a geoscientist licensed by the Texas Board of Professional Geoscientists, or an equivalent entity that licenses geoscientists, shall register the geoscientist in the program.

(b) A geoscientist registered in the program may contract to perform corrective action under this subchapter unless the Texas Board of Professional Geoscientists, or an equivalent entity that licenses geoscientists, determines that the geoscientist is not qualified to perform a corrective action.

(c) A geoscientist registered under this section is not subject to the commission's examination or continuing education requirements, fees, or disciplinary proceedings.

(d) The commission may not adopt minimum qualifications for a geoscientist licensed by the Texas Board of Professional Geoscientists, or an equivalent entity that licenses geoscientists, to contract with an eligible owner or operator to perform a corrective action under this subchapter.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 9, eff. Sept. 1, 2001.

Sec. 26.366. LICENSURE OF PERSONS WHO SUPERVISE CORRECTIVE ACTIONS. (a) The commission may implement a program under Chapter 37 to license persons who supervise a corrective action under this subchapter.

(b) The commission, on the request of an engineer licensed by the Texas Board of Professional Engineers and Land Surveyors, shall license the engineer in the program.

(c) An engineer licensed in the program may supervise a corrective action under this subchapter unless the Texas Board of Professional Engineers and Land Surveyors determines the engineer is not qualified to supervise a corrective action.

(d) An engineer licensed under this section is not subject to the commission's examination or continuing education requirements,

fees, or disciplinary procedures.

(e) The commission may not adopt minimum qualifications for an engineer licensed by the Texas Board of Professional Engineers and Land Surveyors to supervise a corrective action under this subchapter.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 9, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.17, eff. September 1, 2019.

Sec. 26.367. LICENSURE OF GEOSCIENTISTS WHO SUPERVISE CORRECTIVE ACTIONS. (a) In administering the program implemented under Section 26.366(a), the commission, on the request of a geoscientist licensed by the Texas Board of Professional Geoscientists, or an equivalent entity that licenses geoscientists, shall license the geoscientist in the program.

(b) A geoscientist licensed in the program may supervise a corrective action under this subchapter unless the Texas Board of Professional Geoscientists, or an equivalent entity that licenses geoscientists, determines that the geoscientist is not qualified to supervise a corrective action.

(c) A geoscientist licensed under this section is not subject to the commission's examination or continuing education requirements, fees, or disciplinary proceedings.

(d) The commission may not adopt minimum qualifications for a geoscientist licensed by the Texas Board of Professional Geoscientists, or an equivalent entity that licenses geoscientists, to contract with an eligible owner or operator to supervise a corrective action under this subchapter.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 9, eff. Sept. 1, 2001.

SUBCHAPTER J. GROUNDWATER PROTECTION

Sec. 26.401. LEGISLATIVE FINDINGS. (a) The legislature finds that:

(1) in order to safeguard present and future groundwater supplies, usable and potentially usable groundwater must be protected and maintained;

(2) protection of the environment and public health and welfare requires that groundwater be kept reasonably free of contaminants that interfere with present and potential uses of groundwater;

(3) groundwater contamination may result from many sources, including current and past oil and gas production and related practices, agricultural activities, industrial and manufacturing processes, commercial and business endeavors, domestic activities, and natural sources that may be influenced by or may result from human activities;

(4) the various existing and potential groundwater uses are important to the state economy; and

(5) aquifers vary both in their potential for beneficial use and in their susceptibility to contamination.

(b) The legislature determines that, consistent with the protection of the public health and welfare, the propagation and protection of terrestrial and aquatic life, the protection of the environment, the operation of existing industries, and the maintenance and enhancement of the long-term economic health of the state, it is the goal of groundwater policy in this state that the existing quality of groundwater not be degraded. This goal of nondegradation does not mean zero-contaminant discharge.

(c) It is the policy of this state that:

(1) discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard; and

(2) the quality of groundwater be restored if feasible.

(d) The legislature recognizes the important role of the use of the best professional judgment of the responsible state agencies in attaining the groundwater goal and policy of this state.

Added by Acts 1989, 71st Leg., ch. 768, Sec. 1, eff. Sept. 1, 1989.

Sec. 26.402. DEFINITION. In this subchapter, "committee" means the Texas Groundwater Protection Committee.

Added by Acts 1989, 71st Leg., ch. 768, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.295, eff. Sept. 1, 1995.

Sec. 26.403. CREATION AND MEMBERSHIP OF TEXAS GROUNDWATER PROTECTION COMMITTEE. (a) The Texas Groundwater Protection Committee is created as an interagency committee to coordinate state agency actions for the protection of groundwater quality in this state.

(b) The commission is designated as the lead agency for the committee and shall administer the activities of the committee.

(c) The committee is composed of:

(1) the executive director of the commission;

(2) the executive administrator of the Texas Water Development Board;

(3) the executive director of the Railroad Commission of Texas;

(4) the commissioner of health of the Texas Department of Health;

(5) the deputy commissioner of the Department of Agriculture;

(6) the executive director of the State Soil and Water Conservation Board;

(7) the Director of the Texas Agricultural Experiment Station;

(8) the director of the Bureau of Economic Geology of The University of Texas at Austin;

(9) a representative selected by the Texas Alliance of Groundwater Districts; and

(10) a representative of the Water Well Drillers and Water Well Pump Installers Program of the Texas Department of Licensing and Regulation selected by the executive director of the department.

(d) Each member of the committee listed in Subsections (c)(1) through (8) of this section may designate a personal representative from the member's agency to represent the member on the committee, but that designation does not relieve the member of responsibility for the acts and decisions of the representative.

(e) The executive director of the commission shall serve as chairman, and the executive administrator of the Texas Water Development Board shall serve as vice-chairman of the committee.

Added by Acts 1989, 71st Leg., ch. 768, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1993, 73rd Leg., ch. 77, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 72, Sec. 1, eff. Aug. 30, 1999.

Sec. 26.404. ADMINISTRATION. (a) The committee shall meet not less than once each calendar quarter at a time determined by the committee and at the call of the chairman.

(b) Each member of the committee serves on the committee as an additional duty of the member's office and is not entitled to compensation for service on the committee.

(c) Each member of the committee may receive reimbursement for actual and necessary expenses in carrying out committee responsibilities as provided by legislative appropriations. Each member who is a representative of a state agency shall be reimbursed from the money budgeted to the member's state agency.

(d) Each agency listed in Sections 26.403(c)(1) through (8) of this code that is represented on the committee shall provide staff as necessary to assist the committee in carrying out its responsibilities.

(e) The committee is subject to Chapter 2001, Government Code, Chapter 551, Government Code, and Chapter 552, Government Code.

Added by Acts 1989, 71st Leg., ch. 768, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 77, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (82), (88), eff. Sept. 1, 1995.

Sec. 26.405. POWERS AND DUTIES OF COMMITTEE. The committee shall, on a continuing basis:

(1) coordinate groundwater protection activities of the agencies represented on the committee;

(2) develop and update a comprehensive groundwater protection strategy for the state that provides guidelines for the prevention of contamination and for the conservation of groundwater and that provides for the coordination of the groundwater protection activities of the agencies represented on the committee;

(3) study and recommend to the legislature groundwater protection programs for each area in which groundwater is not protected by current regulation;

(4) file with the governor, lieutenant governor, and speaker of the house of representatives before the date that each regular legislative session convenes a report of the committee's activities during the two preceding years and any recommendations for legislation for groundwater protection; and

(5) publish the joint groundwater monitoring and contamination report required by Section 26.406(c) of this code.

Added by Acts 1989, 71st Leg., ch. 768, Sec. 1, eff. Sept. 1, 1989.

Sec. 26.406. GROUNDWATER CONTAMINATION INFORMATION AND REPORTS; RULES. (a) Each state agency having responsibilities related to the protection of groundwater shall maintain a public file of all documented cases of groundwater contamination that are reasonably suspected of having been caused by activities regulated by the agency.

(b) For purposes of this section, the agencies identified as having responsibilities related to protection of groundwater include the commission, the Department of Agriculture, the Railroad Commission of Texas, and the State Soil and Water Conservation Board.

(c) In conjunction with the commission, the committee shall publish not later than April 1 of each year a joint groundwater monitoring and contamination report covering the activities and findings of the committee made during the previous calendar year. The report must:

(1) describe the current status of groundwater monitoring programs conducted by or required by each agency at regulated facilities or in connection with regulated activities;

(2) contain a description of each case of groundwater contamination documented during the previous calendar year and of each case of groundwater contamination documented during previous periods for which enforcement action was incomplete at the time of issuance of the preceding report; and

(3) indicate the status of enforcement action for each case of groundwater contamination that is included in the report.

(d) The committee shall adopt rules defining the conditions that constitute groundwater contamination for purposes of inclusion of cases in the public files and the joint report required by this section.

Added by Acts 1989, 71st Leg., ch. 768, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.296, eff. Sept. 1, 1995.

Sec. 26.407. PROTECTION AND ENHANCEMENT PLANS. (a) The commission, with the advice of the committee, shall develop plans, except for those plans required by Section 201.026, Agriculture Code, for the protection and enhancement of water quality pursuant to federal statute, regulation, or policy, including management plans for the prevention of water pollution by agricultural chemicals and agents.

(b) Any agency represented on the committee shall be eligible to receive and spend federal funds for its participation in the development of such management plans. Receipt of such funds shall have no effect on whether the agency in receipt of the funds is the lead agency for water issues in this state.

Added by Acts 1989, 71st Leg., ch. 768, Sec. 1, eff. Sept. 1, 1989.

Sec. 26.408. NOTICE OF GROUNDWATER CONTAMINATION. (a) If a state agency documents under Section 26.406(a) a case of groundwater contamination that may affect a drinking water well, the state agency shall notify the commission.

(b) Not later than the 30th day after the date the commission receives notice under Subsection (a) or obtains independent knowledge of groundwater contamination, the commission shall make every effort to give notice of the contamination by first class mail to each owner of a private drinking water well that may be affected by the contamination and to each applicable groundwater conservation district.

(c) The committee by rule shall prescribe the form and content of notice required under this section.

Acts 2003, 78th Leg., ch. 1135, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER K. OCCUPATIONAL LICENSING AND REGISTRATION

Sec. 26.451. DEFINITIONS. In this subchapter:

(1), (2) Repealed by Acts 2001, 77th Leg., ch. 880, Sec.

25(1), eff. Sept. 1, 2001.

(3) "Critical junctures" means, in the case of an installation, repair, or removal, all of the following steps:

(A) preparation of the tank bedding immediately before receiving the tank;

(B) setting of the tank and the piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(C) connection of piping systems to the tank;

(D) all pressure testing of the underground storage tank, including associated piping, performed during the installation;

(E) completion of backfill and filling of the excavation;

(F) any time during the repair in which the piping system is connected or reconnected to the tank;

(G) any time during the repair in which the tank or its associated piping is tested; and

(H) any time during the removal of the tank.

(4) "Installation" means the installation of underground storage tanks and ancillary equipment.

(5) to (10) Repealed by Acts 2001, 77th Leg., ch. 880, Sec. 25(1), eff. Sept. 1, 2001.

(11) "Removal" means the process of removing and disposing of an underground storage tank that is no longer in service, or the process of abandoning an underground storage tank in place after purging the tank of vapors and filling the vessel of the tank with an inert material.

(12) "Repair" means the modification or correction of an underground storage tank and ancillary equipment. The term does not include:

(A) relining an underground storage tank through the application of epoxy resins or similar materials;

(B) the performance of a tightness test to ascertain the integrity of the tank;

(C) the maintenance and inspection of cathodic protection devices by a corrosion expert or corrosion technician;

(D) emergency actions to halt or prevent leaks or ruptures; or

(E) minor maintenance on ancillary aboveground equipment.

(13), (14) Repealed by Acts 2001, 77th Leg., ch. 880, Sec. 25(1), eff. Sept. 1, 2001.

Acts 1989, 71st Leg., ch. 244, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 639, Sec. 1, eff. Aug. 30, 1993. Renumbered from Vernon's Ann.Civ.St. art. 8900, Sec. 1 and amended by Acts 1995, ch. 315, Sec. 15, eff. Sept. 1, 1995. Amended 2001, 77th Leg., ch. 880, Sec. 25(1), eff. Sept. 1, 2001.

Sec. 26.452. UNDERGROUND STORAGE TANK CONTRACTOR. (a) A person who offers to undertake, represents that the person is able to undertake, or undertakes to install, repair, or remove an underground storage tank must hold a registration issued by the commission under Chapter 37. If the person is a partnership or joint venture, it need not register in its own name if each partner or joint venture is registered.

(b) An underground storage tank contractor must have an on-site supervisor who is licensed by the commission under Chapter 37 at the site at all times during the critical junctures of the installation, repair, or removal.

(c) This subchapter does not apply to the installation of a storage tank or other facility exempt from regulation under Section 26.344.

Acts 1989, 71st Leg., ch. 244, eff. Sept. 1, 1989. Renumbered from Vernon's Ann.Civ.St. art. 8900, Sec. 2 and amended by Acts 1995, 74th Leg., ch. 315, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 880, Sec. 11, eff. Sept. 1, 2001.

Sec. 26.456. UNDERGROUND STORAGE TANK ON-SITE SUPERVISOR LICENSING. (a) A person supervising the installation, repair, or removal of an underground storage tank must hold a license issued by the commission under Chapter 37.

(b) An on-site supervisor must be present at the site at all times during the critical junctures of the installation, repair, or removal.

Acts 1989, 71st Leg., ch. 244, eff. Sept. 1, 1989. Renumbered from Vernon's Ann.Civ.St. art. 8900, Sec. 6 and amended by Acts 1995, 74th

Leg., ch. 315, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 880, Sec. 11, eff. Sept. 1, 2001.

SUBCHAPTER L. PROTECTION OF CERTAIN WATERSHEDS

Sec. 26.501. DEFINITIONS. In this subchapter:

(1) "Concentrated animal feeding operation" has the meaning assigned by 30 T.A.C. Section 321.32 on the effective date of this subchapter.

(2) "New concentrated animal feeding operation" means a proposed concentrated animal feeding operation, any part of which is located on property not previously authorized by the state to be operated as a concentrated animal feeding operation.

(3) "Historical waste application field" means an area of land that at any time since January 1, 1995, has been owned or controlled by an operator of a concentrated animal feeding operation on which agricultural waste from a concentrated animal feeding operation has been applied.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 12.02, eff. Sept. 1, 2001.

Sec. 26.502. APPLICABILITY. This subchapter applies only to a feeding operation confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole source impairment zone. In this subchapter, "major sole source impairment zone" means a watershed that contains a reservoir:

(1) that is used by a municipality as a sole source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and

(2) at least half of the water flowing into which is from a source that, on the effective date of this subchapter, is on the list of impaired state waters adopted by the commission as required by 33 U.S.C. Section 1313(d), as amended:

(A) at least in part because of concerns regarding pathogens and phosphorus; and

(B) for which the commission, at some time, has prepared and submitted a total maximum daily load standard.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 12.02, eff. Sept. 1, 2001.

Sec. 26.503. REGULATION OF CERTAIN CONCENTRATED ANIMAL FEEDING OPERATION WASTES. (a) The commission may authorize the construction or operation of a new concentrated animal feeding operation, or an increase in the animals confined under an existing operation, only by a new or amended individual permit.

(b) The individual permit issued or amended under Subsection (a) must:

(1) provide for management and disposal of waste in accordance with Subchapter B, Chapter 321, Title 30, Texas Administrative Code;

(2) require that 100 percent of the collectible manure produced by the additional animals in confinement at an expanded operation or all of the animals in confinement at a new operation must be:

(A) disposed of or used outside of the watershed;

(B) delivered to a composting facility approved by the executive director;

(C) applied as directed by the commission to a waste application field owned or controlled by the owner of the concentrated animal feeding operation, if the field is not a historical waste application field;

(D) put to another beneficial use approved by the executive director; or

(E) applied to a historical waste application field that is owned or operated by the owner or operator of the concentrated animal feeding operation only if:

(i) results of representative composite soil sampling conducted at the waste application field and filed with the commission show that the waste application field contains 200 or fewer parts per million of extractable phosphorus (reported as P); or

(ii) the manure is applied, with commission approval, in accordance with a detailed nutrient utilization plan approved by the commission that is developed by:

(a) an employee of the United States Department of Agriculture's Natural Resources Conservation Service;

(b) a nutrient management specialist certified by the United States Department of Agriculture's Natural Resources Conservation Service;

(c) the State Soil and Water Conservation Board;

(d) the Texas Agricultural Extension Service;

(e) an agronomist or soil scientist on the full-time staff of an accredited university located in this state; or

(f) a professional agronomist or soil scientist certified by the American Society of Agronomy.

(c) The commission may approve a detailed nutrient utilization plan approved by the commission that is developed by a professional agronomist or soil scientist certified by the American Society of Agronomy only if the commission finds that another person listed by Subsection (b)(2)(E)(ii) cannot develop a plan in a timely manner.

(d) The commission may not issue a general permit to authorize the discharge of agricultural waste into or adjacent to waters in this state from an animal feeding operation if such waters are within a major sole source impairment zone.

(e) The commission and employees or agents of the commission may enter public or private property at any reasonable time for activities related to the purposes of this subchapter. The commission may enforce this authority as provided by Section 7.032, 7.051, 7.052, or 7.105.

(f) This section does not limit the commission's authority to include in an individual or general permit under this chapter provisions necessary to protect a water resource in this state.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 12.02, eff. Sept. 1, 2001.

Sec. 26.504. WASTE APPLICATION FIELD SOIL SAMPLING AND TESTING. (a) The commission shall collect one or more representative composite soil samples from each permitted waste application field associated with a concentrated animal feeding operation. The commission shall perform the sampling under this subsection not less often than once every 12 months. Sampling results obtained by the commission shall be used by the permitted concentrated animal feeding

operator to satisfy any annual sampling of permitted waste application fields required by commission rule or individual permit.

(b) Each sample collected under this section must be tested for phosphorus and any other nutrient designated by the commission. The commission may have the sampling required by this section performed under contract. The sampling must be performed by a person described by Section 26.503(b)(2)(E)(ii). The test results must be made available to the operator of the concentrated animal feeding operation. The test results are public records of the commission.

(c) If the samples tested under Subsection (b) show a phosphorus level in the soil of more than 500 parts per million, the operator shall file with the commission a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii).

(d) If the samples tested under Subsection (b) show a phosphorus level in the soil of more than 200 parts per million but not more than 500 parts per million, the operator shall:

(1) file with the commission a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii); or

(2) show that the level is supported by a nutrient utilization plan certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii).

(e) The owner or operator of a waste application field required by this section to have a nutrient utilization plan with a phosphorus reduction component for which the results of tests performed on composite soil samples collected 12 months or more after the plan is filed do not show a reduction in phosphorus is subject to enforcement for a violation of this subchapter at the discretion of the executive director. The executive director, in determining whether to take an enforcement action under this subsection, shall consider any explanation presented by the owner or operator regarding the reasons for the lack of phosphorus reduction, including an act of God, meteorologic conditions, diseases, vermin, crop conditions, or variability of soil testing results.

(f) Repealed by Acts 2009, 81st Leg., R.S., Ch. 769, Sec. 2, eff. June 1, 2010.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 12.02, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 769 (S.B. 876), Sec. 1, eff. June 1, 2010.
Acts 2009, 81st Leg., R.S., Ch. 769 (S.B. 876), Sec. 2, eff. June 1, 2010.

For expiration of Subchapter M, see Section 26.562.

SUBCHAPTER M. WATER QUALITY PROTECTION AREAS

Sec. 26.551. DEFINITIONS. In this subchapter:

(1) "Aggregates" means any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, granite, gravel, gypsum, marble, sand, stone, caliche, limestone, dolomite, rock, riprap, or other nonmineral substance. The term does not include clay or shale mined for use in manufacturing structural clay products.

(2) "John Graves Scenic Riverway" means that portion of the Brazos River Basin, and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas.

(3) "Operator" means any person engaged in or responsible for the physical operation and control of a quarry.

(4) "Overburden" means all materials displaced in an aggregates extraction operation that are not, or reasonably would not be expected to be, removed from the affected area.

(5) "Owner" means any person having title, wholly or partly, to the land on which a quarry exists or has existed.

(6) "Pit" means an open excavation from which aggregates have been or are being extracted with a depth of five feet or more below the adjacent and natural ground level.

(7) "Quarry" means the site from which aggregates for commercial sale are being or have been removed or extracted from the earth to form a pit, including the entire excavation, stripped areas, haulage ramps, and the immediately adjacent land on which the plant processing the raw materials is located. The term does not include any land owned or leased by the responsible party not being currently used in the production of aggregates for commercial sale or an

excavation to mine clay or shale for use in manufacturing structural clay products.

(8) "Quarrying" means the current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates for commercial sale from natural deposits occurring in the earth.

(9) "Refuse" means all waste material directly connected with the production, cleaning, or preparation of aggregates that have been produced by quarrying.

(10) "Responsible party" means the owner, operator, lessor, or lessee who is responsible for overall function and operation of a quarry required to apply for and hold a permit pursuant to this subchapter.

(11) "Water quality protection area" means a contributing watershed of a river the water quality of which is threatened by quarrying activities.

(12) "Water body" means any navigable watercourse, river, stream, or lake within the water quality protection area.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.552. APPLICABILITY; PILOT PROGRAM. (a) This subchapter applies only to quarrying in a water quality protection area designated by commission rule. This subchapter does not apply to the construction or operation of a municipal solid waste facility regardless of whether the facility includes a pit or quarry that is associated with past quarrying.

(b) For the period of September 1, 2005, to September 1, 2025, the commission shall apply this subchapter only as a pilot program in the John Graves Scenic Riverway.

(c) This subchapter does not apply to:

(1) a quarry or associated processing plant that since on or before January 1, 1994, has been in regular operation in the John Graves Scenic Riverway without cessation of operation for more than 30 consecutive days and under the same ownership;

(2) the construction or modification of associated equipment located on a quarry site or associated processing plant site described by Subdivision (1); or

(3) an activity, facility, or operation regulated under Chapter 134, Natural Resources Code.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.553. REGULATION OF QUARRIES WITHIN WATER QUALITY PROTECTION AREA. (a) The commission shall require a responsible party to obtain an individual permit for any discharges from a quarry located in a water quality protection area that is located:

(1) within a 100-year floodplain of any water body; or

(2) within one mile of any water body.

(b) The commission shall require a responsible party to obtain a general permit under Section 26.040 for any quarry that is located in a water quality protection area and located a distance of more than one mile from any water body.

(c) Subject to Subsection (d), the commission shall prohibit the construction or operation of any new quarry, or the expansion of an existing quarry, located within 1,500 feet of a water body located in a water quality protection area for which a person files an application for a permit or permit amendment after September 1, 2005.

(d) Notwithstanding Subsection (c), the commission may issue or amend a permit to authorize the construction or operation of a quarry located between 200 and 1,500 feet of a water body on finding that:

(1) the responsible party can satisfy performance criteria established by commission rule and incorporated into the permit to address:

(A) slope gradients that minimize the potential for erosion, slides, sloughing of quarry walls, overburden piles, and banks into the water body and related water quality considerations;

(B) whether operations could result in significant damage to important historic and cultural values and ecological systems;

(C) whether operations could 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 a water supply or of food or fiber products; and

(D) whether operations could 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;

(2) the responsible party has provided a plan for the control of surface water drainage and water accumulation to prevent:

(A) erosion, siltation, or runoff; and

(B) damage to:

(i) fish, wildlife, or fish or wildlife habitat; or

(ii) public or private property;

(3) the responsible party has provided a plan for reclamation of the quarry that is consistent with best management standards and practices adopted by the commission for quarry reclamation, which may include backfilling, soil stabilization and compacting, grading, erosion control measures, and appropriate revegetation; and

(4) the responsible party has provided evidence that, to the extent possible, quarrying will be conducted using the best available technology to:

(A) minimize disturbance and adverse effects of the quarry operation on fish, wildlife, and related environmental resources; and

(B) enhance fish, wildlife, and related environmental resources where practicable.

(e) The commission by rule shall establish effluent or other water quality requirements, including requirements for financial responsibility, adequate to protect the water resources in a water quality protection area for inclusion in any authorization, including an individual or general permit, issued under this section by the commission.

(f) In addition to any other requirements established by commission rule adopted under Subsection (e), the responsible party for a quarry located in a water quality protection area required to obtain an individual or general permit shall include with an application filed with the commission under this section:

(1) a proposed plan of action for how the responsible party will restore the receiving water body to background conditions in the event of an unauthorized discharge that affects the water body; and

(2) evidence of sufficiently funded bonding or proof of financial resources to mitigate, remediate, and correct any potential future effects on a water body of an unauthorized discharge to a

water body.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.554. FINANCIAL RESPONSIBILITY FOR DISCHARGES OF CERTAIN WASTES WITHIN WATER QUALITY PROTECTION AREA. (a) The commission by rule shall adopt requirements for:

(1) maintaining evidence of financial responsibility for restoration of a water body affected by an unauthorized discharge from a permitted quarry; or

(2) taking corrective action and compensating for water quality effects caused by an unauthorized discharge resulting from quarrying.

(b) A responsible party commits a violation if the responsible party operates a permitted quarry knowing that financial responsibility required by a permit does not exist.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.555. INSPECTIONS OF AND SAMPLING OF WATER IN JOHN GRAVES SCENIC RIVERWAY. (a) To detect potential violations of this subchapter in the John Graves Scenic Riverway, the commission, the Brazos River Authority, and the Parks and Wildlife Department shall coordinate efforts to conduct each calendar year:

(1) visual inspections of the riverway; and

(2) testing of water samples drawn from the Brazos River and its tributaries in the riverway.

(b) The visual inspections and the drawing of water samples must be conducted at least once in a winter month and at least once in a summer month. The visual inspections must be conducted both from the surface of the John Graves Scenic Riverway and from an aircraft flying over the riverway.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.556. UNAUTHORIZED DISCHARGES OF CERTAIN WASTES WITHIN WATER QUALITY PROTECTION AREA; ENFORCEMENT. (a) The commission shall enforce this subchapter and impose administrative and civil penalties for discharges from a quarry in violation of this subchapter. Subject to Subsection (d), the commission shall assess an administrative penalty against a responsible party of a quarry responsible for a discharge in violation of this subchapter or of a permit, rule, or order adopted or issued under this subchapter in an amount of not less than $2,500 and not more than $25,000 for each violation of this subchapter or of the permit, rule, or order adopted or issued under this subchapter. Subject to Subsection (d), the commission shall assess an administrative penalty against a person for any other violation of this subchapter or of a permit, rule, or order adopted or issued under this subchapter in an amount of not less than $100 for each violation of this subchapter or of the permit, rule, or order adopted or issued under this subchapter. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(b) In determining the amount of the penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts, and the hazard or potential hazard the violation presents to the health, safety, or welfare of the public;

(2) the effects of the violation on instream uses, water quality, and fish and wildlife habitats;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;

(D) whether the violator is engaged in a for-profit operation;

(E) any economic benefit gained through the violation; and

(F) the amount necessary to deter future violations;

and

(4) any other matters that justice may require.

(c) In addition to the administrative penalties and other available remedies or causes of action, the commission may seek injunctive relief in the district courts of Travis County to:

(1) force the temporary or permanent closure of a quarry operated without authorization required under this subchapter;

(2) force the temporary or permanent closure of a permitted quarry under this subchapter for which acceptable evidence of financial responsibility is not maintained;

(3) force the temporary or permanent closure of any quarry responsible for an unauthorized discharge; or

(4) force corrective action by the responsible party of a quarry responsible for an unauthorized discharge.

(d) The commission may compromise, modify, or remit, with or without conditions, an administrative penalty imposed under this subchapter. In determining the appropriate amount of a penalty for settlement of an administrative enforcement matter, the commission may consider a respondent's willingness to contribute to supplemental environmental projects that are approved by the commission, giving preference to projects that benefit the community in which the alleged violation occurred and address the remediation, reclamation, or restoration of the water quality and the beds, bottoms, and banks of water bodies in the water quality area adversely affected by unauthorized discharges from quarries or abandoned quarries that threaten water quality and the beds, bottoms, and banks of water bodies in the water quality area. The commission may encourage the cleanup of contaminated property through the use of supplemental environmental projects. The commission may not approve a project that is necessary to bring a respondent into compliance with environmental laws, that is necessary to remediate environmental harm caused by the respondent's alleged violation, or that the respondent has already agreed to perform under a preexisting agreement with a governmental agency.

(e) A violation of this subchapter also constitutes an offense that may be prosecuted and punished under Section 7.147.

(f) Nothing in this subchapter affects the right of any person that has a justiciable interest to pursue an available common law or statutory remedy to enforce a right, to prevent or seek redress or compensation for the violation of a right, or otherwise to redress an

injury.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.557. EMERGENCY ORDERS. The commission may issue a temporary or emergency order under Section 5.509 relating to a discharge of waste or pollutants from a quarry in a water quality protection area.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.558. RECOVERY OF COSTS FOR UNAUTHORIZED DISCHARGES WITHIN WATER QUALITY PROTECTION AREA. If the commission has incurred any costs in undertaking a corrective or enforcement action with respect to an unauthorized discharge from a quarry under this subchapter, including a reclamation or restoration action, the responsible party is liable to the state for all reasonable costs of the corrective or enforcement action, including court costs and reasonable attorney's fees, and for any punitive damages that may be assessed by the court.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.559. RECLAMATION AND RESTORATION FUND ACCOUNT. (a) Penalties and other money received by the commission as a result of an enforcement action taken under this subchapter, and any gift or grant the commission receives for the purposes of this subchapter, shall be deposited into the reclamation and restoration fund account in the general revenue fund. Money in the account may be appropriated only to the commission for the reclamation and restoration of the beds, bottoms, and banks of water bodies affected by the unlawful discharges subject to this subchapter.

(b) At least 60 days before spending money from the reclamation and restoration fund account, the commission shall publish notice of its proposed plan and conduct a hearing for the purpose of soliciting

public comment, oral or written. The commission shall fully consider all written and oral submissions on the proposed plan.

(c) At least 30 days before the date of the public hearing, the notice must be published in the Texas Register and in a newspaper of general circulation in the county where the violation resulting in the payment of the penalties or other money occurred.

(d) Interest and other income earned on money in the account shall be credited to the account. The account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.560. COOPERATION WITH OTHER STATE AGENCIES. (a) The commission is the principal authority in the state on matters relating to the implementation of this subchapter. All other state agencies engaged in water quality or water pollution control activities in a water quality protection area shall coordinate those activities with the commission.

(b) The executive director, with the consent of the commission, may enter into contracts, memoranda of understanding, or other agreements with other state agencies for purposes of developing effluent or other water quality requirements, including requirements for financial responsibility, adequate to protect the water resources in a water quality protection area, in any individual or general permit or other authorization issued under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.562. EXPIRATION. This subchapter expires September 1, 2025.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

CHAPTER 27. INJECTION WELLS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 27.001. SHORT TITLE. This chapter may be cited as the Injection Well Act.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981.

Sec. 27.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Executive director" means the executive director of the commission.

(3) "Railroad commission" means the Railroad Commission of Texas.

(4) "Pollution" means the alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(5) "Industrial and municipal waste" means any liquid, gaseous, solid, or other waste substance, or combination of these substances, which may cause or might reasonably be expected to cause pollution of fresh water and which result from:

(A) processes of industry, manufacturing, trade, or business;

(B) development or recovery of natural resources other than oil or gas; or

(C) disposal of sewage or other wastes of cities, towns, villages, communities, water districts, and other municipal corporations.

(6) "Oil and gas waste" means waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources, waste arising out of or incidental to the underground storage of hydrocarbons other than storage in artificial tanks or containers, or waste arising out of or incidental to the operation of gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants. The term includes but is not limited to salt water, brine, sludge, drilling mud, and other liquid

or semi-liquid waste material.

(7) "Fluid" means a material or substance that flows or moves in a liquid, gaseous, solid, semi-solid, sludge, or other form or state.

(8) "Fresh water" means water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.

(9) "Casing" means material lining used to seal off strata at and below the earth's surface.

(10) "Disposal well" means an injection well that is used for the injection of industrial and municipal waste or oil and gas waste.

(11) "Injection well" means an artificial excavation or opening in the ground made by digging, boring, drilling, jetting, driving, or some other method, and used to inject, transmit, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; or a well initially drilled to produce oil and gas which is used to transmit, inject, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; or a well used for the injection of any other fluid; but the term does not include any surface pit, surface excavation, or natural depression used to dispose of industrial and municipal waste or oil and gas waste.

(12) "Extraction of minerals" means the use of an injection well for the development or recovery of natural resources other than resources subject to the jurisdiction of the railroad commission, and includes solution mining of minerals, in situ uranium mining, and mining of sulfur by the Frasch process, but does not include the solution mining of salt when leaching a cavern for the storage of hydrocarbons.

(13), (14) Renumbered as (11) and (12) by Acts 1985, 69th Leg., ch. 795, Sec. 1.114, eff. Sept. 1, 1985.

(15) "Hazardous waste" has the meaning assigned to that term by Section 361.003, Health and Safety Code.

(16) "Production well" means a well used to recover uranium through in situ solution recovery, including an injection well used to recover uranium. The term does not include a well used to inject waste.

(17) "Monitoring well" means a well that is used to measure or monitor the level, quality, quantity, or movement of subsurface

water.

(18) "Area permit" means a permit that authorizes the construction and operation of production and monitoring wells used in operations and restoration associated with in situ recovery of uranium.

(19) "Anthropogenic carbon dioxide":

(A) means:

(i) carbon dioxide that would otherwise have been released into the atmosphere that has been:

(a) stripped, segregated, or divided from any other fluid stream; or

(b) captured from an emissions source, including:

(1) an advanced clean energy project as defined by Section 382.003, Health and Safety Code, or another type of electric generation facility; or

(2) an industrial source of emissions;

(ii) any incidental associated substance derived from the source material for, or from the process of capturing, carbon dioxide described by Subparagraph (i); and

(iii) any substance added to carbon dioxide described by Subparagraph (i) to enable or improve the process of injecting the carbon dioxide; and

(B) does not include naturally occurring carbon dioxide that is recaptured, recycled, and reinjected as part of enhanced recovery operations.

(20) "Anthropogenic carbon dioxide injection well" means an injection well used to inject or transmit anthropogenic carbon dioxide into a reservoir.

(21) "Enhanced recovery operation" means the use of any process for the displacement of hydrocarbons from a reservoir other than primary recovery and includes the use of any physical, chemical, thermal, or biological process and any co-production project.

(22) "Geologic storage" means the underground storage of anthropogenic carbon dioxide in a reservoir.

(23) "Geologic storage facility" means the underground reservoir, underground equipment, injection wells, and surface buildings and equipment used or to be used for the geologic storage of anthropogenic carbon dioxide and all surface and subsurface rights and appurtenances necessary to the operation of a facility for the

geologic storage of anthropogenic carbon dioxide. The term includes any reasonable and necessary areal buffer and subsurface monitoring zones, pressure fronts, and other areas as may be necessary for this state to receive delegation of any federal underground injection control program relating to the storage of carbon dioxide. The term does not include a pipeline used to transport carbon dioxide from the facility at which the carbon dioxide is captured to the geologic storage facility. The storage of carbon dioxide incidental to or as part of enhanced recovery operations does not in itself automatically render a facility a geologic storage facility.

(24) "Oil or gas" means oil, natural gas, or gas condensate.

(25) "Reservoir" means a natural or artificially created subsurface sedimentary stratum, formation, aquifer, cavity, void, or coal seam.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 566, Sec. 14, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 795, Sec. 1.114, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 14, Sec. 284(76), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.067, eff. Aug. 12, 1991.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1118 (H.B. 3838), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 1, eff. September 1, 2009.

Sec. 27.003. POLICY AND PURPOSE. It is the policy of this state and the purpose of this chapter to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and the operation of existing industries, taking into consideration the economic development of the state, to prevent underground injection that may pollute fresh water, and to require the use of all reasonable methods to implement this policy.

Added by Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 1.27, eff. Sept. 1, 2001.

SUBCHAPTER B. JURISDICTION OF COMMISSION

Sec. 27.011. PERMIT FROM COMMISSION. Unless the activity is subject to the jurisdiction of the railroad commission or authorized by a rule of the commission, no person may continue utilizing an injection well or begin drilling an injection well or converting an existing well into an injection well to dispose of industrial and municipal waste, to extract minerals, or to inject a fluid without first obtaining a permit from the commission.

Amended by Acts 1977, 65th Leg., p. 1647, ch. 644, Sec. 10. Renumbered from Sec. 22.011 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.114, eff. Sept. 1, 1985.

Sec. 27.012. APPLICATION FOR PERMIT. (a) The commission shall prescribe forms for application for a permit and shall make the forms available on request without charge.

(b) Applications for hazardous and nonhazardous disposal well permits shall be processed in accordance with this chapter for the benefit of the state and the preservation of its natural resources.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.114, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 347, Sec. 1, eff. May 26, 2001.

Sec. 27.013. INFORMATION REQUIRED OF APPLICANT. An applicant shall furnish any information the executive director considers necessary to discharge his duties under this chapter and the rules of the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.114, eff. Sept. 1, 1985.

Sec. 27.014. APPLICATION FEE. With each application for a

disposal well permit, the commission shall collect a fee in the amount provided by and under the terms of Section 5.701.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.114, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 347, Sec. 1, eff. May 26, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 901 (H.B. 2654), Sec. 6, eff. September 1, 2007.

Sec. 27.015. LETTER FROM RAILROAD COMMISSION. (a) A person making application to the commission for a disposal well permit under this chapter shall submit with the application a letter from the railroad commission concluding that drilling or using the disposal well and injecting industrial and municipal waste into the subsurface stratum will not endanger or injure any known oil or gas reservoir.

(b) In a hearing on an application for a disposal well permit under this chapter, the commission may not proceed to hearing on any issues other than preliminary matters such as notice until the letter required from the railroad commission under Subsection (a) of this section is provided to the commission.

(c) The commission shall find that there will be no impairment of oil or gas mineral rights if the railroad commission has issued a letter under Subsection (a) that concludes that drilling and using the disposal well will not endanger or injure any known oil or gas reservoir.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.114, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 638, Sec. 2, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 802, Sec. 2, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 16.02, eff. Sept. 1, 1995.

Sec. 27.016. INSPECTION OF WELL LOCATION. On receiving an application for a permit, the executive director shall have an inspection made of the location of the proposed disposal well to determine the local conditions and the probable effect of the well

and shall determine the requirements for the setting of casing, as provided in Sections 27.051, 27.055, and 27.056 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981.

Sec. 27.017. RECOMMENDATIONS FROM OTHER ENTITIES. (a) The executive director shall submit to the Department of State Health Services and to other persons which the commission may designate copies of every application received in proper form. These entities may make recommendations to the commission concerning any aspect of the application within 30 days.

(b) If an application is received in proper form for a permit for an injection well to dispose of industrial and municipal waste and the proposed location of the injection well is in the territory of a groundwater conservation district, the executive director shall submit a copy of the application to the governing body of the groundwater conservation district.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.114, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 638, Sec. 3, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 11.297, eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 106 (H.B. 444), Sec. 1, eff. May 21, 2011.

Sec. 27.018. HEARING ON PERMIT APPLICATION. (a) If it is considered necessary and in the public interest, the commission may hold a public hearing on the application. The commission shall hold a hearing on a permit application for an injection well to dispose of industrial and municipal waste if a hearing is requested by a local government located in the county of the proposed disposal well site or by an affected person. In this subsection, "local government" has the meaning provided for that term by Chapter 26 of this code.

(b) The commission by rule shall provide for giving notice of the opportunity to request a public hearing on a permit application.

The rules for notice shall include provisions for giving notice to local governments and affected persons. The commission shall define "affected person" by rule.

(c) Before the commission begins to hear testimony in a contested case as defined by Chapter 2001, Government Code, evidence must be placed in the record to demonstrate that proper notice regarding the hearing was given to affected persons. If mailed notice to an affected person is required, the commission or other party to the hearing shall place evidence in the record that notice was mailed to the address of the affected person included in the appropriate county tax rolls at the time of mailing. For the purposes of this subsection, the affidavit of the commission employee responsible for the mailing of the notice, attesting to the fact that notice was mailed to the address included in the tax rolls at the time of mailing, shall be prima facie evidence of proper mailing. The commission may not proceed with receipt of testimony in a contested case until there is compliance with this subsection.

(d) An application for an injection well to dispose of hazardous waste shall be subject to the pre-application local review process established by Section 361.063, Health and Safety Code, and to the requirements of Section 361.0791, Health and Safety Code.

(e) In addition to the requirements of Subsection (c), before any testimony is heard in a contested case regarding an application for a permit for an injection well to dispose of industrial and municipal waste that is proposed to be located in the territory of a groundwater conservation district, the record of the proceeding must include evidence that:

(1) a copy of each draft permit proposed by the executive director was provided to the governing body of the groundwater conservation district; and

(2) notice of the contested case hearing was mailed to the governing body of the groundwater conservation district.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 566, Sec. 15, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 795, Sec. 1.115, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 638, Sec. 4, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 14, Sec. 284(77), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 296, Sec. 1.22, eff. June 7, 1991; Acts 1995,

74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 106 (H.B. 444), Sec. 2, eff. May 21, 2011.

Sec. 27.019. RULES, ETC. (a) The commission shall adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this chapter.

(b) Copies of any rules under this chapter proposed by the commission shall before their adoption be sent to the railroad commission, the Texas Department of Health, and any other persons the commission may designate. Any agency or person to whom the copies of proposed rules are sent may submit comments and recommendations to the commission and shall have reasonable time to do so as the commission may prescribe.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.116, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 11.298, eff. Sept. 1, 1995.

Sec. 27.020. MINING OF SULFUR. The commission is authorized to develop a regulatory program with respect to the injection of fluid associated with the mining of sulfur by the Frasch process in accordance with the provisions of this chapter. The commission may not impose any requirements more stringent than those promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act, 42 U.S.C. 300h et seq., as amended, unless the commission determines that more stringent regulations are necessary to protect human health or the environment.

Added by Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.116, eff. Sept. 1, 1985.

Sec. 27.021. PERMIT FOR DISPOSAL OF BRINE FROM DESALINATION OPERATIONS OR OF DRINKING WATER TREATMENT RESIDUALS IN CLASS I

INJECTION WELLS. (a) The commission may issue a permit to dispose of brine produced by a desalination operation or of drinking water treatment residuals in a Class I injection well if the applicant for the permit meets all the statutory and regulatory requirements for the issuance of a permit for a Class I injection well.

(a-1) A permit issued under this section may authorize the disposal of water treatment residuals produced by the desalination of seawater.

(b) The commission by rule shall provide for public notice and comment on an application for a permit authorized by this section. Notwithstanding Section 27.018, an application for a permit authorized by this section is not subject to the hearing requirements of Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 1118, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 901 (H.B. 2654), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 901 (H.B. 2654), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 829 (H.B. 4097), Sec. 6, eff. June 17, 2015.

Sec. 27.022. JURISDICTION OVER CARBON DIOXIDE INJECTION. The commission has jurisdiction over the injection of carbon dioxide produced by a clean coal project, to the extent authorized by federal law, into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources by a Class II injection well, or by a Class I injection well if required by federal law.

Added by Acts 2005, 79th Leg., Ch. 1097 (H.B. 2201), Sec. 9, eff. June 18, 2005.

Sec. 27.023. JURISDICTION OVER IN SITU URANIUM APPLICATION DEVELOPMENT AND OPERATIONS. (a) The commission has exclusive jurisdiction over and shall regulate wells used during the development of permit applications to obtain required premining geologic, hydrologic, and water quality information.

(b) The commission shall require a well described by Subsection (a) to be registered with the commission. A well described by Subsection (a) is not subject to the commission's permitting, notice, and hearing requirements.

(c) If a well described by Subsection (a) is included in an area permit issued by the commission:

(1) the registration status of the well ceases; and

(2) the well is subject to all rules applicable to the area permit, including notice and hearing requirements.

Added by Acts 2007, 80th Leg., R.S., Ch. 1118 (H.B. 3838), Sec. 2, eff. September 1, 2007.

Sec. 27.024. SHARING OF GEOLOGIC, HYDROLOGIC, AND WATER QUALITY DATA. (a) After a person developing an application for an area permit for an area located in a groundwater conservation district has identified a permit boundary, the person shall provide to that district:

(1) information regarding wells encountered by that person during the development of the area permit application that are not recorded in the public record;

(2) a map showing the locations of wells that are located within one-quarter mile of the location for the proposed permit and that are recorded in the public record;

(3) premining water quality information collected from wells described by Section 27.023(a);

(4) on a monthly basis, the amount of water produced from the wells described by Section 27.023(a); and

(5) a record of strata as described by Section 27.053, except confidential information described by Section 131.048, Natural Resources Code.

(b) A person may take not more than 90 days after the person receives the final information described by Subsection (a) to perform standard quality control and quality assurance procedures before the person submits the information to the groundwater conservation district.

Added by Acts 2007, 80th Leg., R.S., Ch. 1118 (H.B. 3838), Sec. 2, eff. September 1, 2007.

Sec. 27.025. GENERAL PERMIT AUTHORIZING USE OF CLASS I INJECTION WELL TO INJECT NONHAZARDOUS BRINE FROM DESALINATION OPERATIONS OR NONHAZARDOUS DRINKING WATER TREATMENT RESIDUALS. (a) The commission may issue a general permit authorizing the use of a Class I injection well to inject nonhazardous brine from a desalination operation or to inject nonhazardous drinking water treatment residuals if the commission determines that the injection well and injection activities are more appropriately regulated under a general permit than under an individual permit based on findings that:

(1) the general permit has been drafted to ensure that it can be readily enforced and that the commission can adequately monitor compliance with the terms of the general permit; and

(2) the general permit will contain proper safeguards to protect ground and surface fresh water from pollution.

(a-1) A general permit issued under this section may authorize an injection well for the disposal of concentrate produced by the desalination of seawater. The general permit must include any requirements necessary to maintain delegation of the federal underground injection control program administered by the commission.

(b) The commission shall publish notice of a proposed general permit in one or more newspapers of statewide or regional circulation and in the Texas Register. The notice must include an invitation for written comments by the public to the commission regarding the proposed general permit and shall be published not later than the 30th day before the date the commission adopts the general permit. The commission by rule may require additional notice to be given.

(c) The commission may hold a public meeting to provide an additional opportunity for public comment. The commission shall give notice of the public meeting under this subsection by publication in the Texas Register not later than the 30th day before the date of the meeting.

(d) The commission shall issue a written response to comments on the general permit at the same time the commission issues or denies the permit. The response to comments is available to the public and shall be mailed to each person who made a comment.

(e) A general permit may provide that an owner of a Class I injection well may obtain authorization to use the well to inject nonhazardous brine from a desalination operation or to inject nonhazardous drinking water treatment residuals under a general

permit by submitting to the commission written notice of intent to be covered by the general permit. The commission by rule shall establish the requirements for the notice of intent, including the information that an owner of an injection well subject to a general permit must submit to authorize the use of the well under the general permit. A general permit may authorize the use of an injection well under the general permit on filing a complete and accurate notice of intent, including all information required by the commission's rules to be submitted, or it may specify a date or period of time after the commission receives the notice of intent, including the required information, on which the use of an injection well is authorized unless the executive director before that time notifies the owner that it is not eligible under the general permit.

(f) Authorization for the use of an injection well under a general permit does not confer a vested right. After written notice to the owner of an injection well, the executive director may suspend authorization for the use of the well under a general permit and may require the owner to obtain authorization for the use of the well under an individual permit.

(g) Notwithstanding the other provisions of this chapter, the commission, after hearing, shall deny or suspend authorization for the use of an injection well under a general permit if the commission determines that the owner's compliance history is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections. A hearing under this subsection is not subject to the requirements relating to a contested case hearing under Chapter 2001, Government Code.

(h) A general permit may be issued for a term not to exceed 10 years. After notice and comment as provided by Subsections (b)-(d), a general permit may be amended, revoked, or canceled by the commission or renewed by the commission for an additional term or terms not to exceed 10 years each. A general permit remains in effect until amended, revoked, or canceled by the commission or, unless renewed by the commission, until expired. If before a general permit expires the commission proposes to renew that general permit, that general permit remains in effect until the date on which the commission takes final action on the proposed renewal.

(i) The commission may add or delete requirements for a general permit through a renewal or amendment process. The commission shall

provide a reasonable time to allow an owner of an injection well to make the changes necessary to comply with the additional requirements.

(j) The commission may impose a fee for the submission of a notice of intent to be covered by the general permit. The fee must be in the same amount as a fee collected under Section 27.014.

(k) The issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit or the authorization for the use of an injection well under a general permit is not subject to the requirements relating to a contested case hearing under Chapter 2001, Government Code.

(l) The use or disposal of radioactive material under this section is subject to the applicable requirements of Chapter 401, Health and Safety Code.

(m) The commission may adopt rules as necessary to implement and administer this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 901 (H.B. 2654), Sec. 3, eff. September 1, 2007.
Renumbered from Water Code, Section 27.023 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(112), eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.20, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 829 (H.B. 4097), Sec. 7, eff. June 17, 2015.

Sec. 27.026. DUAL AUTHORIZATION OF INJECTION WELLS TO INJECT NONHAZARDOUS BRINE FROM DESALINATION OPERATIONS OR NONHAZARDOUS DRINKING WATER TREATMENT RESIDUALS. (a) The commission may authorize by individual permit, by general permit, or by rule a Class V injection well for the injection of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals into a Class II injection well that is also permitted by the railroad commission under Subchapter C.

(b) The commission and railroad commission by rule shall enter or amend a memorandum of understanding to implement and administer this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 297 (H.B. 2230), Sec. 1, eff.

September 1, 2015.

SUBCHAPTER C. OIL AND GAS WASTE; INJECTION WELLS

Sec. 27.031. PERMIT FROM RAILROAD COMMISSION. No person may continue using a disposal well or begin drilling a disposal well or converting an existing well into a disposal well to dispose of oil and gas waste without first obtaining a permit from the railroad commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981.

Sec. 27.032. INFORMATION REQUIRED OF APPLICANT. The railroad commission shall require an applicant to furnish any information the railroad commission considers necessary to discharge its duties under this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981.

Sec. 27.0321. APPLICATION FEE. (a) With each application for an oil and gas waste disposal well permit, the applicant shall submit to the railroad commission a nonrefundable fee of $100.

(b) The 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, Natural Resources Code.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 71, eff. Sept. 1, 1985.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 45, eff. September 1, 2015.

Sec. 27.033. LETTER OF DETERMINATION. A person making application to the railroad commission for a permit under this chapter shall submit with the application a letter of determination

from the railroad commission stating that drilling and using the disposal well and injecting oil and gas waste into the subsurface stratum will not endanger the freshwater strata in that area and that the formation or stratum to be used for the disposal is not freshwater sand.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 2.05, eff. September 1, 2011.

Sec. 27.034. RAILROAD COMMISSION RULES, ETC. (a) The railroad commission shall adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this chapter, including rules for notice and procedure of public hearings. The rules for notice shall include provisions for giving notice to local governments and affected persons. The railroad commission shall define "affected person" by rule.

(b) Copies of any rules under this chapter proposed by the railroad commission shall, before their adoption, be sent to the commission, the Texas Department of Health, and any other persons the railroad commission may designate. Any agency or person to whom the copies of proposed rules and regulations are sent may submit comments and recommendations to the railroad commission and shall have reasonable time to do so as the railroad commission may prescribe.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.117, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 11.299, eff. Sept. 1, 1995.

Sec. 27.035. JURISDICTION OVER IN SITU RECOVERY OF TAR SANDS. (a) The railroad commission has jurisdiction over the in situ recovery of tar sands and may issue permits for injection wells used for the in situ recovery of tar sands.

(b) A person may not begin to drill an injection well to be used in the in situ recovery of tar sands unless that person has a

valid permit for the well issued by the railroad commission under this chapter.

(c) The railroad commission shall adopt rules that are necessary to administer and regulate the in situ recovery of tar sands.

(d) For purposes of regulation by the railroad commission, an injection well for the in situ recovery of tar sands is designated as a Class V well under the underground injection control program administered by the railroad commission.

Added by Acts 1983, 68th Leg., p. 754, ch. 184, Sec. 1, eff. Sept. 1, 1983.

Text of section as added by Acts 1985, 69th Leg., ch. 795, Sec. 5.013

Sec. 27.036. JURISDICTION OVER BRINE MINING. (a) The railroad commission has jurisdiction over brine mining and may issue permits for injection wells used for brine mining.

(b) A person may not begin to drill an injection well to be used for brine mining unless that person has a valid permit for the well issued by the railroad commission under this chapter.

(c) The railroad commission shall adopt rules that are necessary to administer and regulate brine mining.

(d) For purposes of regulation by the railroad commission, an injection well for brine mining is designated as a Class V well under the underground injection control program administered by the railroad commission.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 5.013, eff. Sept. 1, 1985.

Text of section as added by Acts 1985, 69th Leg., ch. 921, Sec. 2

Sec. 27.036. JURISDICTION OVER BRINE MINING. (a) The railroad commission has jurisdiction over brine mining and may issue permits for injection wells used for brine mining.

(b) A person may not begin to drill an injection well to be used for brine mining unless that person has a valid permit for the well issued by the railroad commission under this chapter.

(c) The railroad commission shall adopt rules that are

necessary to administer and regulate brine mining.

(d) For purposes of regulation by the railroad commission, an injection well for brine mining is designated as a Class III well under the underground injection control program administered by the railroad commission.

(e) This section takes effect September 1, 1985.

(f) This section does not invalidate any permit for an injection well used for brine mining that was issued by the Texas Water Commission before the effective date of this section. Within 90 days after the effective date of this section, the Railroad Commission of Texas shall issue a substitute permit under the name and authority of the railroad commission to each person who on the effective date of this section holds a valid permit issued by the Texas Water Commission for an injection well used for brine mining.

(g) Application for injection well permits covering brine mining submitted to the Texas Water Commission before the effective date of this section for which permits have not been issued by the commission shall be transmitted to the railroad commission.

Added by Acts 1985, 69th Leg., ch. 921, Sec. 2, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 32, eff. June 19, 1987.

SUBCHAPTER C-1. GEOLOGIC STORAGE AND ASSOCIATED INJECTION OF ANTHROPOGENIC CARBON DIOXIDE

Sec. 27.041. JURISDICTION. (a) Except as provided by Subsection (b), the railroad commission has jurisdiction over the geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir.

(b) The jurisdiction of the railroad commission over the geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a saline formation described by Subsection (a) is subject to the review of the legislature based on the recommendations made in the preliminary report described by Section 10, S.B. No. 1387, Acts of the 81st Legislature, Regular Session, 2009.

(c) Except as provided by Subsection (b), the railroad commission has jurisdiction over a well used for the purpose provided

by Subsection (a) regardless of whether the well was initially completed for that purpose or was initially completed for another purpose and is converted to the purpose provided by Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 2, eff. September 1, 2009.

Sec. 27.042. APPLICABILITY. This subchapter does not apply to the injection of fluid through the use of a Class II injection well as defined by 40 C.F.R. Section 144.6(b) for the primary purpose of enhanced recovery operations.

Added by Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 2, eff. September 1, 2009.

Sec. 27.043. PERMIT FROM RAILROAD COMMISSION. A person may not begin drilling or operating an anthropogenic carbon dioxide injection well for geologic storage or constructing or operating a geologic storage facility regulated under this subchapter without first obtaining the necessary permits from the railroad commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 2, eff. September 1, 2009.

Sec. 27.044. INFORMATION REQUIRED OF APPLICANT. The railroad commission shall require an applicant to provide any information the railroad commission considers necessary to discharge its duties under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 2, eff. September 1, 2009.

Sec. 27.045. FEES. (a) The railroad commission may impose fees to cover the cost of:

(1) permitting, monitoring, and inspecting anthropogenic carbon dioxide injection wells for geologic storage and geologic storage facilities; and

(2) enforcing and implementing this subchapter and rules adopted by the railroad commission under this subchapter.

(b) Fees collected by the railroad commission under this section shall be deposited to the credit of the anthropogenic carbon dioxide storage trust fund established under Section 121.003, Natural Resources Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(16), eff. September 1, 2011.

Sec. 27.046. LETTER OF DETERMINATION. (a) The railroad commission may not issue a permit under rules adopted under this subchapter until the railroad commission issues to the applicant for the permit a letter of determination stating that drilling and operating the anthropogenic carbon dioxide injection well for geologic storage or operating the geologic storage facility will not injure any freshwater strata in that area and that the formation or stratum to be used for the geologic storage facility is not freshwater sand.

(b) To make the determination required by Subsection (a), the railroad commission shall review:

(1) the area of review and corrective action plans;

(2) any subsurface monitoring plans required during injection or post injection;

(3) any postinjection site care plans; and

(4) any other elements of the application reasonably required in order for the railroad commission to make the determination required by Subsection (a).

(c) The railroad commission shall adopt rules to implement and administer this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 2.06, eff. September 1, 2011.

Sec. 27.047. RULES. The railroad commission shall adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this subchapter, including rules for:

(1) the geologic storage and associated injection of anthropogenic carbon dioxide, including:

(A) geologic site characterization;

(B) area of review and corrective action;

(C) well construction;

(D) operation;

(E) mechanical integrity testing;

(F) monitoring;

(G) well plugging;

(H) postinjection site care;

(I) site closure; and

(J) long-term stewardship;

(2) the enforcement of this subchapter and rules adopted by the railroad commission under this subchapter; and

(3) the collection and administration of:

(A) fees imposed under Section 27.045; and

(B) penalties imposed for a violation of this subchapter or rules adopted by the railroad commission under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 2, eff. September 1, 2009.

Sec. 27.048. CONSISTENCY WITH AND IMPLEMENTATION OF FEDERAL REQUIREMENTS. (a) Rules adopted by the railroad commission under this subchapter must be consistent with applicable rules or regulations adopted by the United States Environmental Protection Agency or another federal agency governing the injection and geologic storage of anthropogenic carbon dioxide.

(b) If rules or regulations adopted to govern the geologic storage and associated injection of anthropogenic carbon dioxide under the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) or another federal statute allow this state to seek primary enforcement authority under the underground injection control program:

(1) the railroad commission shall seek primacy to

administer and enforce the program subject to the jurisdiction granted under this subchapter; and

(2) this state shall seek primacy to administer and enforce the program for the geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a saline formation.

Added by Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 2, eff. September 1, 2009.

Sec. 27.049. MEMORANDUM OF UNDERSTANDING. The commission and the railroad commission, as necessary to comply with this subchapter, by rule shall:

(1) amend the memorandum of understanding recorded in 16 T.A.C. Section 3.30; or

(2) enter into a new memorandum of understanding.

Added by Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 2, eff. September 1, 2009.

Sec. 27.050. FINANCIAL RESPONSIBILITY. (a) A person to whom a permit is issued under this subchapter must provide to the railroad commission annually evidence of financial responsibility that is satisfactory to the railroad commission.

(b) In determining whether the person is financially responsible, the railroad commission shall rely on:

(1) the person's most recent quarterly report filed with the United States Securities and Exchange Commission under Section 13 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m or 78o(d)); or

(2) if the person is not required to file with the United States Securities and Exchange Commission a report described by Subdivision (1), the person's most recent audited financial statement.

Added by Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 2, eff. September 1, 2009.

SUBCHAPTER D. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

Sec. 27.051. ISSUANCE OF PERMIT. (a) The commission may grant an application in whole or part and may issue the permit if it finds:

(1) that the use or installation of the injection well is in the public interest;

(2) that no existing rights, including, but not limited to, mineral rights, will be impaired;

(3) that, with proper safeguards, both ground and surface fresh water can be adequately protected from pollution;

(4) that the applicant has made a satisfactory showing of financial responsibility if required by Section 27.073 of this code;

(5) that the applicant has provided for the proper operation of the proposed hazardous waste injection well;

(6) that the applicant for a hazardous waste injection well not located in an area of industrial land use has made a reasonable effort to ensure that the burden, if any, imposed by the proposed hazardous waste injection well on local law enforcement, emergency medical or fire-fighting personnel, or public roadways, will be reasonably minimized or mitigated; and

(7) that the applicant owns or has made a good faith claim to, or has the consent of the owner to utilize, or has an option to acquire, or has the authority to acquire through eminent domain, the property or portions of the property where the hazardous waste injection well will be constructed.

(b) The railroad commission may grant an application for a permit under Subchapter C in whole or part and may issue the permit if it finds:

(1) that the use or installation of the injection well is in the public interest;

(2) that the use or installation of the injection well will not endanger or injure any oil, gas, or other mineral formation;

(3) that, with proper safeguards, both ground and surface fresh water can be adequately protected from pollution; and

(4) that the applicant has made a satisfactory showing of financial responsibility if required by Section 27.073.

(b-1) The railroad commission may issue a permit under Subchapter C-1 if it finds:

(1) that the injection and geologic storage of anthropogenic carbon dioxide will not endanger or injure any oil, gas, or other mineral formation;

(2) that, with proper safeguards, both ground and surface

fresh water can be adequately protected from carbon dioxide migration or displaced formation fluids;

(3) that the injection of anthropogenic carbon dioxide will not endanger or injure human health and safety;

(4) that the reservoir into which the anthropogenic carbon dioxide is injected is suitable for or capable of being made suitable for protecting against the escape or migration of anthropogenic carbon dioxide from the reservoir; and

(5) that the applicant for the permit meets all of the other statutory and regulatory requirements for the issuance of the permit.

(c) In the permit, the commission or railroad commission shall impose terms and conditions reasonably necessary to protect fresh water from pollution, including the necessary casing.

(d) The commission, in determining if the use or installation of an injection well is in the public interest under Subsection (a)(1), shall consider, but shall not be limited to the consideration of:

(1) compliance history of the applicant and related entities under the method for using compliance history developed by the commission under Section 5.754 and in accordance with the provisions of Subsection (e);

(2) whether there is a practical, economic, and feasible alternative to an injection well reasonably available; and

(3) if the injection well will be used for the disposal of hazardous waste, whether the applicant will maintain sufficient public liability insurance for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents or will otherwise demonstrate financial responsibility in a manner adopted by the commission in lieu of public liability insurance. A liability insurance policy which satisfies the policy limits required by the hazardous waste management regulations of the commission for the applicant's proposed pre-injection facilities shall be deemed "sufficient" under this subdivision if the policy:

(A) covers the injection well; and

(B) is issued by a company that is authorized to do business and to write that kind of insurance in this state and is solvent and not currently under supervision or in conservatorship or receivership in this state or any other state.

Text of subsec. (e) as amended by Acts 2001, 77th Leg., ch. 347, Sec.

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(e) The commission shall establish a procedure for the preparation of comprehensive summaries of the applicant's compliance history, including the compliance history of any corporation or business entity managed, owned, or otherwise closely related to the applicant. The summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and prior to the promulgation of the public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for an injection well permit with environmental statutes and the rules adopted or orders or permits issued by the commission may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. Evidence of the compliance history of an applicant for an injection well permit may be offered by the executive director at a hearing on the application and admitted into evidence subject to the rules of evidence. All evidence admitted, including compliance history, shall be considered by the commission in determining whether to issue, amend, extend or renew a permit. If the commission concludes that the applicant's compliance history is unacceptable, the commission shall deny the permit.

Text of subsec. (e) as amended by Acts 2001, 77th Leg., ch. 965, Sec. 16.08

(e) Consistent with Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, the commission shall establish a procedure for preparing summaries of the applicant's compliance history. The summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and prior to the promulgation of the public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for an injection well for the disposal of hazardous waste with the rules adopted or orders or permits issued by the commission under this chapter may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. In accordance with this subsection and Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, evidence of the compliance history of an applicant for an injection well may be offered at a hearing on the application and may

be admitted into evidence, subject to the rules of evidence. All evidence admitted, including compliance history, shall be considered by the commission in determining whether to issue, amend, extend or renew a permit.

Text of subsec. (e) as amended by Acts 2001, 77th Leg., ch. 1161, Sec. 4

(e) The commission shall establish a procedure by rule for its preparation of compliance summaries relating to the history of compliance and noncompliance by the applicant with the rules adopted or orders or permits issued by the commission under this chapter for any injection well for which a permit has been issued under this chapter. A compliance summary must include as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which an authorization is sought. The compliance summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and prior to the promulgation of the public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for an injection well for the disposal of hazardous waste with the rules adopted or orders or permits issued by the commission under this chapter may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. All evidence admitted, including compliance history, shall be considered by the commission in determining whether to issue, amend, extend or renew a permit. In this subsection, "environmental management system" has the meaning assigned by Section 5.127.

(f) In the issuance of a permit for a hazardous waste injection well into a salt dome, the commission shall consider the location of any geologic fault in the salt dome in the immediate proximity of the injection well bore, the presence of an underground water aquifer, and the presence of sulfur mines or oil and gas wells in the area.

(g)(1) The commission may not issue a permit for a hazardous waste injection well in a solution-mined salt dome cavern unless the United States Environmental Protection Agency and the commission determine that sufficient rules are in place to regulate that activity.

(2) Before issuing a permit for a hazardous waste injection well in a solution-mined salt dome cavern, the commission by order

must find that there is an urgent public necessity for the hazardous waste injection well. The commission, in determining whether an urgent public necessity exists for the permitting of the hazardous waste injection well in a solution-mined salt dome cavern, must find that:

(A) the injection well will be designed, constructed, and operated in a manner that provides at least the same degree of safety as required of other currently operating hazardous waste disposal technologies;

(B) consistent with the need and desire to manage within the state hazardous wastes generated in the state, there is a substantial or obvious public need for additional hazardous waste disposal capacity and the hazardous waste injection well will contribute additional capacity toward servicing that need;

(C) the injection well will be constructed and operated in a manner so as to safeguard public health and welfare and protect physical property and the environment;

(D) the applicant has demonstrated that groundwater and surface waters, including public water supplies, will be protected from the release of hazardous waste from the salt-dome waste containment cavern; and

(E) any other criteria required by the commission to satisfy that the test of urgency has been met.

(h) In determining whether the use or installation of an injection well is in the public interest under Subsection (a)(1), the commission shall consider the compliance history of the applicant in accordance with Subsection (e) and Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections.

(i) For purposes of this subsection, "Edwards Aquifer" has the meaning assigned by Section 26.046(a). Except as otherwise provided by this subsection, the commission may not authorize by rule or permit an injection well that transects or terminates in the Edwards Aquifer. The commission by rule may authorize:

(1) injection of groundwater withdrawn from the Edwards Aquifer;

(2) injections of storm water, flood water, or groundwater through improved sinkholes or caves located in karst topographic areas; or

(3) injections of water made in accordance with Section 1.44(e)(3), Chapter 626, Acts of the 73rd Legislature, Regular

Session, 1993.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1983, 68th Leg., p. 5265, ch. 967, Sec. 14, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 566, Sec. 16, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 638, Sec. 5, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 977, Sec. 33, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 1234, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 296, Sec. 1.23, eff. June 7, 1991; Acts 2001, 77th Leg., ch. 347, Sec. 2, eff. May 26, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 16.08, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 966, Sec. 11.03(a), eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1161, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(66), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.21, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 585 (S.B. 520), Sec. 2, eff. September 1, 2019.

Sec. 27.0511. CONDITIONS OF CERTAIN PERMITS. (a) If the railroad commission receives an application for an injection well permit for a well that is to be used for enhanced recovery of oil, before a permit for the well may be granted, the railroad commission shall require the applicant for the permit to provide written information relating to the material that the applicant plans to inject into the well for enhanced recovery purposes and to other material available to the applicant that might be used to inject into the well for enhanced recovery and shall make the determination required by Subsection (c) of this section.

(b) At the time the railroad commission receives an application under Subsection (a) of this section, it shall give notice to the commission that an application covered by this section is being considered and shall supply the commission with a copy of the application and a request for commission comment on the application.

On receiving the information requested under Subsection (a) of this section, the railroad commission shall notify the commission that the information has been received and make the information available for the commission's inspection. The commission shall examine the application and information. Before the railroad commission considers the application, the commission shall submit to the railroad commission written comments regarding the use of fresh water under the permit and any problems that the commission anticipates will result from the use of fresh water under the permit. However, if the commission does not submit its written comments within 30 days after the request, the railroad commission may consider the application without the commission comments.

(c) On receiving the information required by Subsection (a) of this section, the railroad commission shall consider the information at the same time it considers whether or not to grant the permit, and if the applicant proposes to inject fresh water into the injection well for enhanced recovery, the railroad commission shall consider whether or not there is some other solid, liquid, or gaseous substance that is available to the applicant and that is economically and technically feasible for the applicant to use for enhanced recovery purposes.

(d) If the railroad commission finds that there is a solid, liquid, or gaseous substance other than fresh water available and economically and technically feasible for use in enhanced recovery under the permit, the railroad commission shall include as a condition of the permit, if granted, that the permittee use the other substance found to be available and economically and technically feasible and that the applicant not use fresh water or that the applicant use fresh water only to the extent specifically stated in the permit.

(e) This section does not apply to injection well permits that are in effect on September 1, 1983. If fresh water is being injected into an injection well in an enhanced recovery program that is in effect on September 1, 1983, and after that time, another substance or material is used for injection for a period of time, the injection well permit is not canceled, and a new permit under this chapter is not required if the operator plans at a later date to resume the use of fresh water for injection in that enhanced recovery program.

(f) Injection well permits for wells that are used for enhanced recovery remain in force until canceled by the railroad commission.

(g) Except as provided by Subsection (h), a person may not continue utilizing or begin utilizing industrial or municipal waste as an injection fluid for enhanced recovery purposes without first obtaining a permit from the commission.

(h) The railroad commission may authorize a person to utilize nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes without first obtaining a permit from the commission. The use or disposal of radioactive material under this subsection is subject to the applicable requirements of Chapter 401, Health and Safety Code.

Added by Acts 1983, 68th Leg., p. 5392, ch. 996, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.118, 5.006, eff. Sept. 1, 1985.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 901 (H.B. 2654), Sec. 4, eff. September 1, 2007.

Sec. 27.0513. AREA PERMITS AND PRODUCTION AREAS FOR URANIUM MINING. (a) The commission may issue a permit pursuant to Section 27.011 that authorizes the construction and operation of two or more similar injection wells within a specified area for mining of uranium. An application for a new permit issued pursuant to Section 27.011, a major amendment of such a permit, or a renewal of such a permit for mining of uranium is subject to the public notice requirements and opportunity for contested case hearing provided under Section 27.018. A new, amended, or renewed permit must incorporate a table of pre-mining low and high values representing the range of groundwater quality within the permit boundary and area of review, as provided by commission rule, for each water quality parameter used to measure groundwater restoration in a commission-required restoration table. The values in the permit range table must be established from pre-mining baseline wells and all available wells within the area of review, including those in the existing or proposed permit boundary and any existing or proposed production areas. Wells used for that purpose are limited to those that have documented completion depths and screened intervals that correspond to a uranium production zone aquifer identified within the permit

boundary.

(b) For a permit for mining of uranium issued on or after September 1, 2007, pursuant to Section 27.011, the term of the permit to authorize injection for recovery of uranium shall be 10 years. The holder of a permit for mining of uranium issued by the commission before September 1, 2007, pursuant to Section 27.011, must submit an application to the commission before September 1, 2012, for renewal of the permit to authorize construction and operation of injection wells for mining of uranium. Authority to construct or operate injection wells for recovery of uranium under a permit issued before September 1, 2007, pursuant to Section 27.011, expires on September 1, 2012, if an application for renewal of the permit is not submitted to the commission before September 1, 2012. Expiration of authority under this subsection does not relieve the permit holder from obligations under the permit or applicable rules, including obligations to restore groundwater and to plug and abandon wells in accordance with the requirements of the permit and applicable rules.

(c) The commission may issue a holder of a permit issued pursuant to Section 27.011 for mining of uranium an authorization that allows the permit holder to conduct mining and restoration activities in production zones within the boundary established in the permit. The commission by rule shall establish application requirements, technical requirements, including the methods for determining restoration table values, and procedural requirements for any authorization. If a restoration table value for a proposed or amended authorization exceeds the range listed in the permit range table such that it falls above the upper limit of the range, the value within the permit range table must be used or a major amendment to the permit range table must be obtained, subject to an opportunity for a contested case hearing or the hearing requirements of Chapter 2001, Government Code.

(d) Notwithstanding Sections 5.551, 5.556, 27.011, and 27.018, an application for an authorization is an uncontested matter not subject to a contested case hearing or the hearing requirements of Chapter 2001, Government Code, if:

(1) the authorization is for a production zone located within the boundary of a permit that incorporates a range table of groundwater quality restoration values used to measure groundwater restoration by the commission;

(2) the application includes groundwater quality

restoration values falling at or below the upper limit of the range established in Subdivision (1); and

(3) the authorization is for a production zone located within the boundary of a permit that incorporates groundwater baseline characteristics of the wells for the application required by commission rule.

(e) The range of restoration values in the range table used for Subsection (d) must be established from baseline wells and all available well sample data collected in the permit boundary and within one-quarter mile of the boundary of the production zone.

(f) As an alternative to Subsection (d), the first application for an authorization issued under Subsection (c) for a production zone located within the boundary of a permit issued under Subsection (a) is subject to the requirements of Chapter 2001, Government Code, relating to an opportunity for a contested case hearing. The first authorization application must contain the following provisions:

(1) a baseline water quality table with a range of groundwater quality restoration values used to measure groundwater restoration by the commission that complies with the same range requirements as a permit described by Subsection (a);

(2) groundwater quality restoration values falling at or below the upper limit of the range established in Subdivision (1); and

(3) groundwater baseline characteristics of the wells for the application required by commission rule.

(g) If a first authorization has previously been issued for a production zone located within the boundary of a permit, that authorization is effective for the purposes of this subsection. A subsequent authorization application for a production zone that is located within the same permit boundary as a production zone for which an authorization was issued under Subsection (f) is not subject to an opportunity for a contested case hearing or the hearing requirements of Chapter 2001, Government Code, unless the subsequent application would authorize the following:

(1) the use of groundwater from a well that was not previously approved in the permit for supplemental production water;

(2) expansion of the permit boundary; or

(3) application monitoring well locations that exceed well spacing requirements or reduce the number of wells required by commission rule.

Added by Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 32, eff. June 15, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 897 (H.B. 1079), Sec. 1, eff. June 14, 2013.

Sec. 27.0515. FACILITIES REQUIRED TO OBTAIN FEDERAL APPROVAL. For a commercial hazardous waste disposal well facility originally permitted by the commission after June 7, 1991, and which is required to obtain from the United States Environmental Protection Agency a variance from the federal land disposal restrictions before injecting permitted hazardous wastes:

(1) a permit or other authorization issued to the facility under this chapter is not subject to cancellation, amendment, modification, revocation, or denial of renewal because the permit holder has not commenced construction or operation of the facility; and

(2) the fixed term of each permit or other authorization issued to the facility under this chapter shall commence on the date physical construction of the authorized waste management facility begins.

Added by Acts 1997, 75th Leg., ch. 1211, Sec. 3, eff. Sept. 1, 1997.

Sec. 27.0516. PERMITS FOR INJECTION WELLS THAT TRANSECT OR TERMINATE IN PORTION OF EDWARDS AQUIFER WITHIN EXTERNAL BOUNDARIES OF BARTON SPRINGS-EDWARDS AQUIFER CONSERVATION DISTRICT. (a) In this section:

(1) "Edwards Aquifer" means that portion of an arcuate belt of porous, waterbearing limestones composed of the Edwards Formation, Georgetown Formation, Comanche Peak Formation, Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, and Edwards Group, together with the Upper Glen Rose Formation where scientific studies have documented a hydrological connection to the overlying Edwards Group trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Kendall, Comal, Hays, Travis, and Williamson Counties. The permeable aquifer units generally overlie the less-permeable Glen

Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut Formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(2) "Engineered aquifer storage and recovery facility" means a facility with one or more wells that is located, designed, constructed, and operated for the purpose of injecting fresh water into a subsurface permeable stratum and storing the water for subsequent withdrawal and use for a beneficial purpose.

(3) "Fresh water" means surface water or groundwater, without regard to whether the water has been physically, chemically, or biologically altered, that:

(A) contains a total dissolved solids concentration of not more than 1,000 milligrams per liter; and

(B) is otherwise suitable as a source of drinking water supply.

(4) "Saline portion of the Edwards Aquifer" means the portion of the Edwards Aquifer that contains only groundwater with a total dissolved solids concentration of more than 1,000 milligrams per liter.

(b) This section applies only to the portion of the Edwards Aquifer that is within the geographic area circumscribed by the external boundaries of the Barton Springs-Edwards Aquifer Conservation District but is not in the jurisdiction of the Edwards Aquifer Authority. This section does not apply to a wastewater facility permitted under Chapter 26 or a subsurface area drip dispersal system permitted under Chapter 32.

(c) This section prevails over Section 27.051(i) to the extent of a conflict.

(d) Except as otherwise provided by this section, the commission by rule or permit may not authorize an injection well that transects or terminates in the Edwards Aquifer.

(e) The commission by rule may authorize:

(1) the injection of fresh water withdrawn from the Edwards Aquifer into a well that transects or terminates in the Edwards Aquifer for the purpose of providing additional recharge; or

(2) the injection of rainwater, storm water, flood water, or groundwater into the Edwards Aquifer by means of an improved natural recharge feature such as a sinkhole or cave located in a karst topographic area for the purpose of providing additional recharge.

(f) The commission by rule, individual permit, or general permit may authorize:

(1) an activity described by Subsection (e);

(2) an injection well that transects and isolates the saline portion of the Edwards Aquifer and terminates in a lower aquifer for the purpose of injecting:

(A) concentrate from a desalination facility; or

(B) fresh water as part of an engineered aquifer storage and recovery facility;

(3) an injection well that terminates in that part of the saline portion of the Edwards Aquifer that has a total dissolved solids concentration of more than 10,000 milligrams per liter for the purpose of injecting into the saline portion of the Edwards Aquifer:

(A) concentrate from a desalination facility, provided that the injection well must be at least three miles from the closest outlet of Barton Springs; or

(B) fresh water as part of an engineered aquifer and storage recovery facility, provided that each well used for injection or withdrawal from the facility must be at least three miles from the closest outlet of Barton Springs;

(4) an injection well that transects or terminates in the Edwards Aquifer for:

(A) aquifer remediation;

(B) the injection of a nontoxic tracer dye as part of a hydrologic study; or

(C) another beneficial activity that is designed and undertaken for the purpose of increasing protection of an underground source of drinking water from pollution or other deleterious effects; or

(5) the injection of fresh water into a well that transects the Edwards Aquifer provided that:

(A) the well isolates the Edwards Aquifer and meets the construction and completion standards adopted by the commission under Section 27.154;

(B) the well is part of an engineered aquifer storage and recovery facility;

(C) the injected water:

(i) is sourced from a public water system, as defined by commission rule, that is permitted by the commission; and

(ii) meets water quality standards for public

drinking water established by commission rule; and

(D) the injection complies with the provisions of Subchapter G that are not in conflict with this section.

(g) The commission must hold a public meeting before issuing a general permit under this section.

(h) Rules adopted or a permit issued under this section:

(1) must require that an injection well authorized by the rules or permit be monitored by means of:

(A) one or more monitoring wells operated by the injection well owner if the commission determines that there is an underground source of drinking water in the area of review that is potentially affected by the injection well; or

(B) if Paragraph (A) does not apply, one or more monitoring wells operated by a party other than the injection well owner, provided that all results of monitoring are promptly made available to the injection well owner;

(2) must ensure that an authorized activity will not result in the waste or pollution of fresh water;

(3) may not authorize an injection well under Subsection (f)(2), (3), or (5) unless the well is initially associated with a small-scale research project designed to evaluate the long-term feasibility and safety of:

(A) the injection of concentrate from a desalination facility; or

(B) an aquifer storage and recovery project;

(4) must require any authorization granted to be renewed at least as frequently as every 10 years;

(5) must require that an injection well authorized under Subsection (f)(2)(A) or (3)(A) be monitored on an ongoing basis by or in coordination with the well owner and that the well owner file monitoring reports with the commission at least as frequently as every three months;

(6) must ensure that any injection well authorized for the purpose of injecting concentrate from a desalination facility does not transect the fresh water portion of the Edwards Aquifer; and

(7) must ensure that an engineered aquifer storage and recovery facility project is consistent with the provisions of Subchapter G that are not in conflict with this section.

(i) A monitoring well described by Subsection (h)(1), if properly sited and completed, may also be used for monitoring a

saline water production well.

(j) A project is considered to be a small-scale research project for purposes of Subsection (h)(3) if the project consists of one production well and one injection well that are operated on a limited scale to provide requisite scientific and engineering information. Such a project is considered to be a small-scale research project regardless of the borehole size of the wells or the equipment associated with the wells or whether the wells are subsequently incorporated into a larger-scale commercial facility.

(k) Notwithstanding Subsection (h)(3), the commission by rule, individual permit, or general permit may authorize the owner of an injection well authorized under Subsection (f)(2), (3), or (5) to continue operating the well for the purpose of implementing the desalination or engineered aquifer storage and recovery project following completion of the small-scale research project, provided that:

(1) the injection well owner timely submits the information collected as part of the research project, including monitoring reports and information regarding the environmental impact of the well, to the commission;

(2) the injection well owner, following the completion of studies and monitoring adequate to characterize risks to the fresh water portion of the Edwards Aquifer, formations included in the Trinity Group, or other fresh water associated with the continued operation of the well, and at least 90 days before the date the owner initiates commercial well operations, files with the commission a notice of intent to continue operation of the well after completion of the research project; and

(3) the commission, based on the studies and monitoring and any other reasonably available information, determines that continued operation of the injection well as described in the notice of intent does not pose an unreasonable risk to the fresh water portion of the Edwards Aquifer, formations included in the Trinity Group, or other fresh water associated with the continued operation of the well.

(l) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(6), eff. September 1, 2019.

(m) The commission shall make the information provided by the owner of the injection well under Subsection (k)(1) easily accessible to the public in a timely manner. The permit may authorize the owner of the well to continue operating the well following completion of

the research project pending the determination by the commission.

(n) If the commission preliminarily determines that continued operation of the injection well would pose an unreasonable risk to the fresh water portion of the Edwards Aquifer, formations included in the Trinity Group, or other fresh water associated with the continued operation of the well, the commission shall notify the operator and specify, if possible, what well modifications or operational controls would be adequate to prevent that unreasonable risk. If the operator fails to modify the injection well as specified by the commission, the commission shall require the operator to cease operating the well.

Added by Acts 2013, 83rd Leg., R.S., Ch. 486 (S.B. 1532), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.46, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(6), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 583 (S.B. 483), Sec. 1, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 583 (S.B. 483), Sec. 2, eff. June 10, 2019.

Sec. 27.052. COPIES OF PERMIT; FILING REQUIREMENTS. (a) The commission shall furnish the railroad commission and the Texas Department of Health with a copy of each permit the commission issues. The railroad commission shall furnish the commission with a copy of each permit the railroad commission issues and the executive director shall in turn forward copies to the Texas Department of Health.

(b) Before beginning injection operations, a person receiving a permit to inject industrial and municipal waste shall file a copy of the permit with the health authorities of the county, city, and town where the well is located.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.119, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 11.300, eff. Sept. 1, 1995.

Sec. 27.053. RECORD OF STRATA. The commission or railroad commission may require a person receiving a permit or authorization by rule under this chapter to keep and furnish a complete and accurate record of the depth, thickness, and character of the different strata penetrated in drilling an injection well, monitoring well, or production well.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1118 (H.B. 3838), Sec. 3, eff. September 1, 2007.

Sec. 27.054. ELECTRIC OR DRILLING LOG. If an existing well is to be converted to an injection well, monitoring well, or production well, the commission or railroad commission may require the applicant to furnish an electric log or a drilling log of the existing well.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1118 (H.B. 3838), Sec. 4, eff. September 1, 2007.

Sec. 27.055. CASING REQUIREMENTS. The casing shall be set at the depth, with the materials, and in the manner required by the commission or railroad commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981.

Sec. 27.056. FACTORS IN SETTING CASING DEPTH. Before setting the depth to which casing shall be installed, the commission or

railroad commission shall consider:

(1) known geological and hydrological conditions and relationships;

(2) foreseeable future economic development in the area; and

(3) foreseeable future demand for the use of fresh water in the locality.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981.

SUBCHAPTER E. GENERAL POWERS

Sec. 27.071. POWER TO ENTER PROPERTY. Members of the commission and the railroad commission and employees of the commission and the railroad commission may enter public or private property to inspect and investigate conditions relating to injection well, monitoring well, disposal well, production well, or geologic storage activities within their respective jurisdictions or to monitor compliance with a rule, permit, or other order of the commission or railroad commission. 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 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.120, eff. Sept. 1, 1985.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1118 (H.B. 3838), Sec. 5, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 4, eff. September 1, 2009.

Sec. 27.072. POWER TO EXAMINE RECORDS. Members of the commission and the railroad commission and employees of the commission and railroad commission may examine and copy those records or memoranda of a business they are investigating as provided by Section 27.071 that relate to the operation of an injection well,

monitoring well, disposal well, production well, or geologic storage facility, or any other records required to be maintained by law.

Added by Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.120, eff. Sept. 1, 1985.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1118 (H.B. 3838), Sec. 6, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 4, eff. September 1, 2009.

Sec. 27.073. FINANCIAL RESPONSIBILITY. (a) A person to whom an injection well permit is issued may be required by the commission or railroad commission to maintain a performance bond or other form of financial security to ensure that:

(1) an abandoned injection well is properly plugged; or

(2) funds are available for plugging, postinjection site care, and closure of an anthropogenic carbon dioxide injection well subject to Subchapter C-1.

(a-1) Notwithstanding Subsection (a), a person to whom an in situ uranium mining injection well, monitoring well, or production well permit is issued shall be required by the commission to maintain a performance bond or other form of financial security to ensure that an abandoned well is properly plugged.

(b) Each state agency is authorized to receive funds as the beneficiary of a financial responsibility mechanism established under this section for the proper plugging of an injection well. Each state agency is authorized to expend such funds from a financial responsibility mechanism for the plugging of wells covered by that mechanism.

(b-1) The railroad commission is authorized to receive funds as the beneficiary of a financial responsibility mechanism established under this chapter for the proper management of an anthropogenic carbon dioxide injection well or geologic storage facility.

(c) If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless:

(1) the policy provides for a right of extension by the insured upon cancellation or nonrenewal of the policy by the

insurance company;

(2) the applicant places in escrow as provided by the commission an amount sufficient to enable the commission to exercise the right under the policy to purchase an extension of the policy from the date of cancellation or expiration of the policy that is reasonable in light of the degree and duration of the risks; and

(3) the applicant provides the commission with a limited power of attorney by which the commission is given an irrevocable power to exercise the applicant's right under the policy to purchase such an extension of the policy.

(d) In addition to other forms of financial security authorized by the rules of the commission, the commission may authorize an applicant to use the letter of credit form of financial security if either the issuing institution or another institution which guarantees payment under the letter:

(1) is a bank chartered by the state or by the federal government;

(2) is federally insured and its financial practices are regulated by the state or federal government; and

(3) is solvent and is not in receivership or owned or controlled by an entity that is insolvent or in receivership.

Added by Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.120, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 638, Sec. 6, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1234, Sec. 2, eff. Aug. 28, 1989. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1118 (H.B. 3838), Sec. 7, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 5, eff. September 1, 2009.

SUBCHAPTER F. CIVIL AND CRIMINAL REMEDIES

Sec. 27.101. CIVIL PENALTY. (a) A person who violates any provision of this chapter under the jurisdiction of the railroad commission, any rule of the railroad commission made under this chapter, or any term, condition, or provision of a permit issued by the railroad commission under this chapter shall be subject to a civil penalty in any sum not exceeding $5,000 for each day of

noncompliance and for each act of noncompliance. A violation under the jurisdiction of the commission is enforceable as provided by Chapter 7.

(b) The action may be brought by the railroad commission in any court of competent jurisdiction in the county where the offending activity is occurring or where the defendant resides.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.121, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1072, Sec. 24, eff. Sept. 1, 1997.

Sec. 27.1011. ADMINISTRATIVE PENALTY. (a) If a person violates the provisions of this chapter or a rule, order, license, permit, or certificate issued under this chapter, the person may be assessed a civil penalty by the railroad 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 railroad 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. 1411, ch. 286, Sec. 3, eff. Aug. 29, 1983.

Sec. 27.1012. PENALTY ASSESSMENT PROCEDURE. (a) A civil penalty may be assessed only after the person charged with a violation described under Section 27.1011 of this code has been given an opportunity for a public hearing.

(b) If a public hearing has been held, the railroad 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 railroad 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 railroad commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(e) The railroad commission shall then issue an order requiring that the penalty be paid.

Added by Acts 1983, 68th Leg., p. 1411, ch. 286, Sec. 3, eff. Aug. 29, 1983.

Sec. 27.1013. PAYMENT OF PENALTY; REFUND. (a) On the issuance of an order finding that a violation has occurred, the railroad 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 railroad commission for placement in an escrow account; or

(B) in lieu of payment into escrow, post with the railroad commission a supersedeas bond in a form approved by the railroad 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 railroad commission shall, within the 30-day period immediately following that determination, if the penalty has been paid to the railroad commission, remit the appropriate amount to the person, with accrued interest, or where a supersedeas bond has been posted, the railroad commission shall execute a release of such bond.

(d) Failure to forward the money to the railroad 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 railroad 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. 1411, ch. 286, Sec. 3, eff. Aug. 29, 1983. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(53), (59), eff. Sept. 1, 1995.

Sec. 27.1014. RECOVERY OF PENALTY. Civil penalties owed under Sections 27.1011-27.1013 of this code may be recovered in a civil action brought by the attorney general at the request of the railroad commission.

Added by Acts 1983, 68th Leg., p. 1411, ch. 286, Sec. 3, eff. Aug. 29, 1983.

Sec. 27.102. INJUNCTION, ETC. (a) The railroad commission may enforce a provision of this chapter under the jurisdiction of the railroad commission, any valid rule made by the railroad commission under this chapter, or any term, condition, or provision of a permit issued by the railroad commission under this chapter by injunction or other appropriate remedy. The suit shall be brought in a court of competent jurisdiction in the county where the offending activity is occurring.

(b) The executive director may enforce a provision of this chapter under the jurisdiction of the commission, a commission rule adopted under this chapter, or a term, condition, or provision of a permit issued by the commission under this chapter as provided by Subchapter B, Chapter 7.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1997, 75th Leg., ch. 1072, Sec. 25, eff. Sept. 1, 1997.

Sec. 27.103. PROCEDURE. (a) At the request of the railroad commission, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both the injunctive relief and civil penalty, authorized in Sections 27.101 and 27.102 of this chapter.

(b) Any party to a suit may appeal from a final judgment as in other civil cases.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981; Acts 1997, 75th Leg., ch. 1072, Sec. 26, eff. Sept. 1, 1997.

Sec. 27.104. EFFECT OF PERMIT ON CIVIL LIABILITY. The fact that a person has a permit issued under this chapter does not relieve him from any civil liability.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981.

Sec. 27.105. CRIMINAL FINES. (a) A person who knowingly or intentionally violates a provision of this chapter under the jurisdiction of the railroad commission, a rule of the railroad commission, or a term, condition, or provision of a permit issued by the railroad commission under this chapter is subject to a fine of not more than $5,000 for each violation and for each day of violation. A violation under the jurisdiction of the commission is enforceable under Section 7.157.

(b) Venue for prosecution of an alleged violation is in the county in which the violation is alleged to have occurred or where the defendant resides.

Added by Acts 1981, 67th Leg., p. 3161, ch. 830, Sec. 1, eff. June 17, 1981. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.1211, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1072, Sec. 27, eff. Sept. 1, 1997.

SUBCHAPTER G. AQUIFER STORAGE AND RECOVERY PROJECTS

Sec. 27.151. DEFINITIONS. In this subchapter:

(1) "Aquifer storage and recovery project" means a project involving the injection of water into a geologic formation for the purpose of subsequent recovery and beneficial use by the project operator.

(2) "ASR injection well" means a Class V injection well used for the injection of water into a geologic formation as part of an aquifer storage and recovery project.

(3) "ASR recovery well" means a well used for the recovery of water from a geologic formation as part of an aquifer storage and recovery project.

(4) "Native groundwater" means the groundwater naturally occurring in a geologic formation.

(5) "Project operator" means a person holding an authorization under this subchapter to undertake an aquifer storage and recovery project.

Added by Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 3, eff. June 16, 2015.

Sec. 27.152. JURISDICTION. The commission has exclusive jurisdiction over the regulation and permitting of ASR injection wells.

Added by Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 3, eff. June 16, 2015.

Sec. 27.153. AUTHORIZATION FOR USE OF CLASS V INJECTION WELLS. (a) The commission may authorize the use of a Class V injection well as an ASR injection well:

(1) by rule;

(2) under an individual permit; or

(3) under a general permit.

(b) In adopting a rule or issuing a permit under this section, the commission shall consider:

(1) whether the injection of water will comply with the standards set forth under the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.);

(2) the extent to which the cumulative volume of water injected for storage in the receiving geologic formation can be successfully recovered from the geologic formation for beneficial use, taking into account that injected water may be commingled to some degree with native groundwater;

(3) the effect of the aquifer storage and recovery project on existing water wells; and

(4) whether the introduction of water into the receiving geologic formation will alter the physical, chemical, or biological quality of the native groundwater to a degree that would:

(A) render the groundwater produced from the receiving geologic formation harmful or detrimental to people, animals, vegetation, or property; or

(B) require an unreasonably higher level of treatment of the groundwater produced from the receiving geologic formation than is necessary for the native groundwater in order to render the groundwater suitable for beneficial use.

(c) All wells associated with a single aquifer storage and recovery project must be located within a continuous perimeter boundary of one parcel of land, or two or more adjacent parcels of land under common ownership, lease, joint operating agreement, or contract.

(d) The commission by rule shall provide for public notice and comment on a proposed general permit authorized under this section. The commission shall require an applicant for an individual permit authorized under this section to provide notice of the application by first class mail to any groundwater conservation district in which the wells associated with the aquifer storage and recovery project will be located and by publishing notice in a newspaper of general circulation in the county in which the wells will be located.

Added by Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 3, eff. June 16, 2015.

Sec. 27.154. TECHNICAL STANDARDS. (a) The commission shall adopt technical standards governing the approval of the use of a Class V injection well as an ASR injection well.

(b) This subsection applies only to an aquifer storage and recovery project proposed to be located in a groundwater conservation

district or other special-purpose district with the authority to regulate the withdrawal of groundwater. Except as otherwise provided by this section, the commission shall limit the volume of water that may be recovered by an aquifer storage and recovery project to an amount that does not exceed the amount of water injected under the project. If the commission determines that the proposed injection of water into a geologic formation will result in a loss of injected water or native groundwater, the commission shall impose additional restrictions on the amount of water that may be recovered to account for the loss. The commission may not deny a permit based on a determination that a loss described by this subsection will occur. A limitation imposed under this subsection may not prohibit the production of native groundwater by an aquifer storage and recovery project if the production complies with Subchapter N, Chapter 36.

(c) The commission by rule shall prescribe construction and completion standards and metering and reporting requirements for ASR injection wells and ASR recovery wells, including for an ASR injection well that also serves as an ASR recovery well.

(d) The commission may not adopt or enforce groundwater quality protection standards for the quality of water injected into an ASR injection well that are more stringent than applicable federal standards.

Added by Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 3, eff. June 16, 2015.

Sec. 27.155. REPORTING OF INJECTION AND RECOVERY VOLUMES. (a) A project operator shall install a meter on each ASR injection well and ASR recovery well associated with the aquifer storage and recovery project.

(b) Each calendar month, the project operator shall provide to the commission a written or electronic report showing for the preceding calendar month the volume of water:

(1) injected for storage; and

(2) recovered for beneficial use.

Added by Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 3, eff. June 16, 2015.

Sec. 27.156. REPORTING OF WATER QUALITY DATA. A project operator shall:

(1) perform water quality testing annually on water to be injected into a geologic formation and water recovered from a geologic formation as part of the aquifer storage and recovery project; and

(2) provide the results of the testing described by Subdivision (1) in written or electronic form to the commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 3, eff. June 16, 2015.

Sec. 27.157. OTHER LAWS NOT AFFECTED. (a) This subchapter does not affect the ability to regulate an aquifer storage and recovery project as authorized under:

(1) Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, for the Edwards Aquifer Authority;

(2) Chapter 8801, Special District Local Laws Code, for the Harris-Galveston Subsidence District;

(3) Chapter 8834, Special District Local Laws Code, for the Fort Bend Subsidence District;

(4) Chapter 8802, Special District Local Laws Code, for the Barton Springs-Edwards Aquifer Conservation District; or

(5) Chapter 8811, Special District Local Laws Code, for the Corpus Christi Aquifer Storage and Recovery Conservation District.

(b) This subchapter does not affect the authority of the commission regarding:

(1) recharge projects in certain portions of the Edwards underground reservoir under Sections 11.023(c) and (d); or

(2) injection wells that transect or terminate in certain portions of the Edwards Aquifer under Section 27.0516.

Added by Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 3, eff. June 16, 2015.

SUBCHAPTER H. AQUIFER RECHARGE PROJECTS

Sec. 27.201. DEFINITIONS. In this subchapter:

(1) "Aquifer recharge project" means a project involving the intentional recharge of an aquifer by means of an injection well

authorized under this chapter or other means of infiltration, including actions designed to:

(A) reduce declines in the water level of the aquifer;

(B) supplement the quantity of groundwater available;

(C) improve water quality in an aquifer;

(D) improve spring flows and other interactions between groundwater and surface water; or

(E) mitigate subsidence.

(2) "Native groundwater" means the groundwater naturally occurring in a geologic formation.

(3) "Project operator" means a person holding an authorization under this subchapter to undertake an aquifer recharge project.

(4) "Recharge injection well" means a Class V injection well used for the injection of water into a geologic formation for an aquifer recharge project, including an improved sinkhole or cave connected to an aquifer.

Added by Acts 2019, 86th Leg., R.S., Ch. 742 (H.B. 720), Sec. 3, eff. June 10, 2019.

Sec. 27.202. JURISDICTION. The commission has exclusive jurisdiction over the regulation and permitting of recharge injection wells.

Added by Acts 2019, 86th Leg., R.S., Ch. 742 (H.B. 720), Sec. 3, eff. June 10, 2019.

Sec. 27.203. AUTHORIZATION FOR USE OF CLASS V INJECTION WELLS. (a) The commission may authorize the use of a Class V injection well as a recharge injection well:

(1) by rule;

(2) under an individual permit; or

(3) under a general permit.

(b) In adopting a rule or issuing a permit under this section, the commission shall consider:

(1) whether the injection of water will comply with the standards established by the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.);

(2) the effect of the aquifer recharge project on existing water wells; and

(3) whether the introduction of water into the receiving geologic formation will alter the physical, chemical, or biological quality of the native groundwater to a degree that would:

(A) render the groundwater produced from the receiving geologic formation harmful or detrimental to people, animals, vegetation, or property; or

(B) require an unreasonably higher level of treatment of the groundwater produced from the receiving geologic formation than is necessary for the native groundwater to render the groundwater suitable for beneficial use.

(c) The commission by rule shall provide for public notice and comment on a proposed general permit authorized under this section. The commission shall require an applicant for an individual permit authorized under this section to provide notice of the application by first class mail to any groundwater conservation district in which the wells associated with the aquifer recharge project will be located and by publishing notice in a newspaper of general circulation in the county in which the wells will be located.

Added by Acts 2019, 86th Leg., R.S., Ch. 742 (H.B. 720), Sec. 3, eff. June 10, 2019.

Sec. 27.204. TECHNICAL STANDARDS. (a) The commission shall adopt technical standards governing the approval of the use of a Class V injection well as a recharge injection well.

(b) The commission may not adopt or enforce groundwater quality protection standards for the quality of water injected into a recharge injection well that are more stringent than applicable federal standards.

Added by Acts 2019, 86th Leg., R.S., Ch. 742 (H.B. 720), Sec. 3, eff. June 10, 2019.

Sec. 27.205. REPORTING OF INJECTION VOLUMES. (a) A project operator shall install a meter on each recharge injection well associated with the aquifer recharge project.

(b) Each calendar year, the project operator shall provide to

the commission a written or electronic report showing for the preceding calendar year the volume of water injected for recharge.

Added by Acts 2019, 86th Leg., R.S., Ch. 742 (H.B. 720), Sec. 3, eff. June 10, 2019.

Sec. 27.206. REPORTING OF WATER QUALITY DATA. A project operator shall:

(1) perform water quality testing annually on water to be injected into a geologic formation as part of the aquifer recharge project; and

(2) provide the results of the testing described by Subdivision (1) in written or electronic form to the commission.

Added by Acts 2019, 86th Leg., R.S., Ch. 742 (H.B. 720), Sec. 3, eff. June 10, 2019.

Sec. 27.207. OTHER LAWS NOT AFFECTED. (a) This subchapter does not affect the ability to regulate an aquifer recharge project as authorized under:

(1) Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, for the Edwards Aquifer Authority;

(2) Chapter 8801, Special District Local Laws Code, for the Harris-Galveston Subsidence District;

(3) Chapter 8834, Special District Local Laws Code, for the Fort Bend Subsidence District;

(4) Chapter 8802, Special District Local Laws Code, for the Barton Springs-Edwards Aquifer Conservation District; or

(5) Chapter 8811, Special District Local Laws Code, for the Corpus Christi Aquifer Storage and Recovery Conservation District.

(b) This subchapter does not affect the authority of the commission regarding:

(1) recharge projects in certain portions of the Edwards underground reservoir under Sections 11.023(c) and (d);

(2) injection wells that transect or terminate in certain portions of the Edwards Aquifer under Section 27.0516; or

(3) aquifer storage and recovery projects under Section 11.155 or Subchapter G of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 742 (H.B. 720), Sec. 3, eff. June 10, 2019.

CHAPTER 28. WATER WELLS AND DRILLED OR MINED SHAFTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 28.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "Executive Director" means the executive director of the Texas Natural Resource Conservation Commission.

(3) "Shaft" means any vertically oriented excavation, whether constructed by drilling or mining techniques, where the depth of the excavation is greater than its diameter, the excavation penetrates into or through the base of the uppermost water-bearing strata, and the primary purpose of the excavation is the transport of workers and materials to and from a destination, at depth, for purposes of geological studies, access to existing and planned subsurface mine workings, or for ventilation of those workings.

(4) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of natural and artificial surface water that is inland or coastal, fresh or salt, and navigable or nonnavigable, and includes the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(5) "Surface facilities" means the on-site above-ground appurtenances, structures, equipment, and other fixtures that are or will be used for storage or processing or in conjunction with the shaft operation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983; Acts 1985, 69th Leg., ch. 795, Sec. 1.122, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 11.301, eff. Sept. 1, 1995.

SUBCHAPTER B. WATER WELLS

Sec. 28.011. UNDERGROUND WATER: REGULATIONS. Except as otherwise provided by this code, the commission may make and enforce rules and regulations for protecting and preserving the quality of underground water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 28.002 by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.123, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 914, Sec. 1, eff. Aug. 30, 1993.

Sec. 28.012. CERTAIN WELLS TO BE PLUGGED OR CASED. The owner of a water well which encounters salt water or water containing mineral or other substances injurious to vegetation or agriculture shall securely plug or case the well in a manner that will effectively prevent the water from escaping from the stratum in which it is found into another water-bearing stratum or onto the surface of the ground.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 28.003 by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983.

SUBCHAPTER C. DRILLED OR MINED SHAFTS

Sec. 28.021. PERMIT FROM COMMISSION. No person desiring to drill, excavate, or otherwise construct a shaft as defined in this chapter may commence construction without first obtaining a permit for such work from the commission.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983.

Sec. 28.022. APPLICATION FOR PERMIT. The commission shall prescribe forms for application for a permit and shall make the forms available on request without charge.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.123, eff.

Sept. 1, 1985.

Sec. 28.023. INFORMATION REQUIRED OF APPLICANT. An applicant shall furnish any information the commission considers necessary to discharge its duties under this chapter and the rules of the commission.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.123, eff. Sept. 1, 1985.

Sec. 28.024. APPLICATION FEE. With each application for a shaft permit, the commission shall collect a fee as set by the executive director to reasonably offset the costs to the commission for processing the application. The fee may not be less than $10,000.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.123, eff. Sept. 1, 1985.

Sec. 28.025. LETTER FROM RAILROAD COMMISSION. A person making application to the commission for a shaft permit shall submit with the application a letter from the railroad commission stating that such shaft construction will not endanger or injure any oil or gas formation or significantly limit the potential for future recovery of or exploration for oil or gas.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.123, eff. Sept. 1, 1985.

Sec. 28.026. INSPECTION OF SHAFT LOCATION. On receiving an application for a permit, the executive director shall have an inspection made of the location of the proposed shaft to determine the local conditions and probable effect of the shaft on water in the state and shall determine the requirements for setting of casing,

liners, and seals as provided in Sections 28.030, 28.036, and 28.037 of this chapter.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983.

Sec. 28.027. RECOMMENDATIONS FROM OTHER AGENCIES. The executive director shall submit to such state agencies and other persons that the commission may designate copies of every application received in proper form. These agencies, persons, and divisions may make recommendations to the commission concerning any aspect of the application and shall have reasonable time to do so as the commission may prescribe.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.123, eff. Sept. 1, 1985.

Sec. 28.028. HEARING ON PERMIT APPLICATION. (a) The commission shall hold an adjudicatory hearing on the application.

(b) The commission by rule shall provide for giving notice of a public hearing on a permit application. The rules for notice shall include provisions for giving notice to local governments and interested persons.

(c) The hearing required in Subsection (a) of this section shall be conducted in accordance with rules for contested cases under Chapter 2001, Government Code. Any person, corporation, partnership, association, local government, government agency, or other entity shall be allowed to participate in a hearing as a party under this section upon a showing of sufficient interest or of an ability to contribute to the resolution of relevant issues.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.124, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(63), eff. Sept. 1, 1995.

Sec. 28.029. DELEGATION OF HEARING POWERS. (a) The commission

may authorize the chief administrative law judge of the State Office of Administrative Hearings to call and hold hearings on any subject on which the commission may hold a hearing.

(b) The commission may also authorize the chief administrative law judge to delegate to one or more administrative law judges the authority to hold any hearing the chief administrative law judge calls.

(c) At any hearing called under this section, the chief administrative law judge or the administrative law judge to whom a hearing is delegated may administer oaths and receive evidence.

(d) The individual or individuals holding a hearing under the authority of this section shall report the hearing in the manner prescribed by the commission.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1995, 74th Leg., ch. 106, Sec. 4, eff. Sept. 1, 1995.

Sec. 28.030. RULES, ETC. (a) The commission shall adopt rules reasonably required for the performance of the powers, duties, and functions of the commission under this chapter.

(b) Such rules shall be published as proposed rules, as prescribed by Chapter 2001, Government Code, no later than 120 days after the enactment of this section and shall provide reasonable time for the commission to receive comments and recommendations from interested agencies and the public before adoption by the commission.

(c) No shaft permit shall be issued by the commission pursuant to this chapter nor shall a permit hearing be held on a shaft application until the commission has adopted rules for the issuance of such shaft permit.

(d) The commission may refuse to accept a shaft permit application or hold a shaft permit application hearing if the planned siting of the shaft is the subject of litigation.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.125, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(63), eff. Sept. 1, 1995.

Sec. 28.031. ISSUANCE OF PERMIT. (a) The commission may grant an application in whole or part and may issue the shaft permit if it finds:

(1) that the use or installation of the shaft is in the public interest and that after consideration of all siting alternatives there is a public need for construction of the shaft at the location for which the application is made;

(2) that no existing rights, including but not limited to mineral rights and water rights, will be impaired;

(3) that, with proper safeguards, both ground and surface water can be adequately protected from pollution; and

(4) that the applicant has made a satisfactory showing of financial responsibility if required by Subsection (b) of Section 28.053 of this chapter.

(b) In the permit the commission shall impose terms and conditions reasonably necessary to protect all water from pollution, including the necessary casing, liners, seals and surface facilities.

(c) In the permit the commission shall impose terms and conditions for final closure of surface facilities and plugging and sealing of the shaft reasonably necessary to protect all water penetrated from pollution.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983.

Sec. 28.032. COPIES OF PERMIT; FILING REQUIREMENTS. (a) The commission shall furnish the railroad commission with a copy of each shaft permit the commission issues.

(b) Before beginning shaft construction, a person receiving a shaft permit shall file a copy of the permit with the commissioners court of the county in which the shaft is to be located.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.126, eff. Sept. 1, 1985.

Sec. 28.033. RECORD OF STRATA. (a) The commission shall require a person applying for a shaft permit to drill or have drilled a test hole on center or offset to the shaft and provide the

following to the commission and the railroad commission in the application:

(1) a description of the lithology into or through the lower confining strata;

(2) results of rock testing;

(3) geophysical logs; and

(4) other information that may be required by the commission.

(b) The commission shall require a person receiving a shaft permit to keep and furnish to the commission and the railroad commission a complete and accurate record of the depth, thickness, and character of the different strata or rock units penetrated in constructing the shaft.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.127, eff. Sept. 1, 1985.

Sec. 28.034. GEOPHYSICAL AND DRILLING LOG. If the shaft is to be constructed over, around, or within 2,000 feet of an existing drilled borehole or boreholes, the commission shall require the applicant for a shaft permit to furnish such geophysical logs as may be required by the commission, including electric logs, and the drilling log and well completion record of all existing boreholes to the commission, along with a complete and accurate core data record of the depth, thickness, and character of the different strata or rock units penetrated as a part of the shaft application.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.127, eff. Sept. 1, 1985.

Sec. 28.035. SEISMIC REFLECTION SURVEY. The commission shall require as a part of any shaft application a seismic reflection survey and velocity control data conforming, at minimum, to specifications established by the commission in the rules provided for in Subsection (a) of Section 28.030 of this chapter.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18,

1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.127, eff. Sept. 1, 1985.

Sec. 28.036. CASING, LINER, AND SEAL REQUIREMENTS. (a) The casing, liners, and seal(s) shall be set at the depth, with the materials, and in the manner required by the commission.

(b) The permittee shall provide records as required by the executive director to indicate compliance with Subsection (a) of this section.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983.

Sec. 28.037. FACTORS IN SETTING CASING, LINER, AND SEAL REQUIREMENTS. Before setting the casing, liner, and seal requirements, the commission shall consider:

(1) known geological and hydrological conditions and relationships;

(2) foreseeable future economic development in the area; and

(3) foreseeable future demand for the use of fresh water in the locality.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983.

Sec. 28.038. ENVIRONMENTAL REPORT. If an environmental report, environmental assessment, or environmental impact statement of any kind that includes an analysis of the environmental impacts of the shaft construction or operation is required by any federal or state agency before approval to construct the shaft, the environmental document, along with evidence of the needed approvals that have been granted, must be submitted to the commission as part of the shaft permit application, and the commission shall make the environmental document available for public review and comment for a period of not less than 30 days before the application for the shaft permit is considered.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.127, eff. Sept. 1, 1985.

SUBCHAPTER D. COMMISSION AUTHORITY

Sec. 28.051. POWER TO ENTER PROPERTY. Members of the commission, employees and agents of the commission, and authorized agents or employees of local governments may enter public or private property at any time to inspect and investigate conditions relating to shaft activities or to monitor compliance with a rule, permit, or other order of the commission. Members, employees, or agents 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. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.127, eff. Sept. 1, 1985.

Sec. 28.052. POWER TO EXAMINE RECORDS. Members of the commission, employees and agents of the commission, and authorized agents or employees of local governments may examine and copy those records or memoranda of a shaft permittee or his contractors they are investigating or monitoring as provided by Section 28.051 of this chapter that relate to the construction and operation of a shaft or any other records required to be maintained by law.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.127, eff. Sept. 1, 1985.

Sec. 28.053. FINANCIAL RESPONSIBILITY. (a) The commission may require in a shaft permit that the permittee reimburse the commission for reasonable costs of monitoring and on-site, full-time surveillance to determine compliance with a rule, permit, or other order of the commission.

(b) A person to whom a shaft permit is issued may be required by the commission to maintain a performance bond or other form of

financial security to ensure payment of costs that may become due in accord with Subsection (a) of this section or to ensure that an abandoned shaft is safely and properly sealed and plugged.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.128, eff. Sept. 1, 1985.

CHAPTER 28A. REGISTRATION AND INSPECTION OF CERTAIN AGGREGATE PRODUCTION OPERATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 28A.001. DEFINITIONS. In this chapter:

(1) "Aggregate production operation" means the site from which aggregates are being or have been removed or extracted from the earth, including the entire areas of extraction, stripped areas, haulage ramps, and the land on 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. For the purposes of this chapter, the term "aggregate production operation" does not include:

(A) a site at which the materials that are being removed or extracted from the earth are used or processed at the same site or at a related site under the control of the same responsible party for the production of cement or lightweight aggregates, or in a lime kiln;

(B) a temporary site that is being used solely to provide aggregate products for use in a public works project involving the Texas Department of Transportation or a local governmental entity;

(C) an extraction area from which all raw material is extracted for use as fill or for other construction uses at the same or a contiguous site;

(D) a site at which the materials that are being removed or extracted from the earth are used or processed for use in the construction, modification, or expansion of a solid waste facility at the site or another location; or

(E) a site at which:

(i) the materials being removed or extracted from the earth are specialty or terrazo-type stone removed or extracted

exclusively for decorative or artistic uses; and

(ii) the portion of the specialty or terrazo-type stone horizon that is exposed for current production for commercial sale in the site does not exceed five acres.

(2) "Aggregates" means any commonly recognized construction material originating from an aggregate production operation from which an operator extracts dimension stone, crushed and broken limestone, crushed and broken granite, crushed and broken stone not elsewhere classified, construction sand and gravel, industrial sand, dirt, soil, or caliche. For purposes of this section, the term "aggregates" does not include clay or shale mined for use in manufacturing structural clay products.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) "Operator" means any person engaged in and responsible for the physical operation and control of the extraction of aggregates.

(5) "Owner" means any person having title, wholly or partly, to the land on which an aggregate production operation exists or has existed.

(6) "Responsible party" means the operator, lessor, or owner who is responsible for the overall function and operation of an aggregate production operation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 107 (H.B. 571), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 167 (H.B. 2582), Sec. 1, eff. May 26, 2017.

SUBCHAPTER B. REGISTRATION AND INSPECTION

Sec. 28A.051. REGISTRATION. (a) The responsible party for an aggregate production operation shall register the operation with the commission not later than the 10th business day before the beginning date of extraction activities and shall renew the registration annually as extraction activities continue.

(b) After extraction activities at an aggregate production operation have ceased and the operator has notified the commission in writing that the operations have ceased, the requirements of this

chapter are not applicable to the aggregate production operation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 107 (H.B. 571), Sec. 1, eff. September 1, 2011.

Sec. 28A.052. SURVEY. (a) The commission annually shall conduct a physical survey of the state to:

(1) identify all active aggregate production operations in this state; and

(2) ensure that each active aggregate production operation in this state is registered with the commission.

(b) The commission may contract with or seek assistance from a governmental entity or other person to conduct the annual survey required by Subsection (a) to identify active aggregate production operations that are not registered under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 107 (H.B. 571), Sec. 1, eff. September 1, 2011.

Sec. 28A.053. INSPECTION. (a) The commission shall inspect each active aggregate production operation in this state for compliance with applicable environmental laws and rules under the jurisdiction of the commission:

(1) at least once every two years during the first six years in which the operation is registered; and

(2) after the expiration of the period described by Subdivision (1), at least once every three years.

(b) Except as provided by Subsection (c), the commission may conduct an inspection only after providing notice to the responsible party in accordance with commission policy.

(c) The commission may conduct unannounced periodic inspections under this section of an aggregate production operation that in the preceding three-year period has been issued a notice of violation by the commission for a violation of an environmental law or rule under the jurisdiction of the commission. The unannounced inspections may be conducted only for a period of not more than one year.

(d) An inspection must be conducted by one or more inspectors trained in the regulatory requirements applicable to active aggregate production operations under the jurisdiction of the commission. If

the inspection is conducted by more than one inspector, each inspector is not required to be trained in each of the applicable regulatory requirements, but the combined training of the inspectors must include each of the applicable regulatory requirements. The applicable regulatory requirements include requirements related to:

(1) individual water quality permits issued under Section 26.027;

(2) a general water quality permit issued under Section 26.040;

(3) air quality permits issued under Section 382.051, Health and Safety Code; and

(4) other regulatory requirements applicable to active aggregate production operations under the jurisdiction of the commission.

(e) An investigation in response to a complaint satisfies the requirement of an inspection under this section if a potential noncompliance issue not related to the complaint is observed and is:

(1) not within an area of expertise of the investigator but is referred by the investigator to the commission for further investigation; or

(2) within an area of expertise of the inspector and is appropriately investigated and appropriately addressed in the investigation report.

Added by Acts 2011, 82nd Leg., R.S., Ch. 107 (H.B. 571), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1050 (H.B. 907), Sec. 1, eff. September 1, 2019.

Sec. 28A.054. REPORT. The commission shall provide a specific section in the annual enforcement report under Section 5.126 with information regarding the implementation of this chapter, including:

(1) the results of the survey to locate unregistered active aggregate production operations under Section 28A.052;

(2) the number and general location of the registered aggregate production operations;

(3) the number of inspectors trained in multiple areas related to the inspection of aggregate production operations;

(4) the number of inspections conducted; and
(5) the results of the inspections.

Added by Acts 2011, 82nd Leg., R.S., Ch. 107 (H.B. 571), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. FEES AND ENFORCEMENT

Sec. 28A.101. FEES. (a) A person who, under laws in the commission's jurisdiction and rules adopted under those laws, is authorized to operate an aggregate production operation shall pay annually an aggregate production operation registration fee to the commission in an amount established by commission rule.

(b) The commission shall set the annual registration fee in an amount sufficient to maintain a registry of active aggregate production operations in this state and implement this chapter, not to exceed $1,500.

(c) Registration fees collected under this section shall be deposited in the water resource management account and may be used only to implement this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 107 (H.B. 571), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1050 (H.B. 907), Sec. 2, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1173 (H.B. 3317), Sec. 19(a), eff. June 14, 2019.

Sec. 28A.102. PENALTY. The commission may assess a penalty of not less than $5,000 and not more than $20,000 for each year in which an aggregate production operation operates without being registered under this chapter. The total penalty under this section may not exceed $40,000 for an aggregate production operation that is operated in three or more years without being registered.

Added by Acts 2011, 82nd Leg., R.S., Ch. 107 (H.B. 571), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1050 (H.B. 907), Sec. 3, eff.

September 1, 2019.

CHAPTER 29. OIL AND GAS WASTE HAULERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 29.001. SHORT TITLE. This chapter may be cited as the Oil and Gas Waste Haulers Act.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 603, Sec. 21, eff. Jan. 1, 1992.

Sec. 29.002. DEFINITIONS. In this chapter:

(1) "Person" means an individual, association of individuals, partnership, corporation, receiver, trustee, guardian, executor, or a fiduciary or representative of any kind.

(2) "Railroad commission" means the Railroad Commission of Texas.

(3) "Oil and gas waste" means oil and gas waste as defined by Section 91.1011, Natural Resources Code, and includes water containing salt or other mineralized substances produced by drilling an oil or gas well or produced in connection with the operation of an oil or gas well.

(4) "Hauler" means a person who transports oil and gas waste for hire by any method other than by pipeline.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 603, Sec. 22, eff. Jan. 1, 1992.

SUBCHAPTER B. PERMITS

Sec. 29.011. APPLICATION FOR PERMIT. Any person may apply to the railroad commission for a permit to haul and dispose of oil and gas waste.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 603, Sec. 23, eff. Jan. 1, 1992.

Sec. 29.012. APPLICATION FORM. The railroad commission shall prescribe a form on which an application for a permit may be made and

shall provide the form to any person who wishes to submit an application.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 29.013. CONTENTS OF APPLICATION. The application for a permit shall:

(1) state the number of vehicles the applicant plans to use for hauling oil and gas waste;

(2) affirmatively show that the vehicles are designed so that they will not leak during transportation of oil and gas waste;

(3) include an affidavit from a person who operates an approved system of oil and gas waste disposal stating that the applicant has permission to use the approved system;

(4) state the applicant's name, business address, and permanent mailing address; and

(5) include other relevant information required by railroad commission rules.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 603, Sec. 24, eff. Jan. 1, 1992.

Sec. 29.014. REJECTING AN APPLICATION. If an application for a permit does not comply with Section 29.013 of this code or with reasonable rules of the railroad commission, the railroad commission may reject the application.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 29.015. APPLICATION FEE. With each application for issuance, renewal, or material amendment of a permit, the applicant shall submit to the railroad commission a nonrefundable fee of $100. Fees collected under this section shall be deposited in the oil and gas regulation and cleanup fund.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept.

1, 1977; Acts 1991, 72nd Leg., ch. 603, Sec. 25, eff. Sept. 1, 1991. Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.27, eff. September 28, 2011.

Sec. 29.018. SUSPENSION; REFUSAL TO RENEW. The railroad commission may suspend or refuse to renew a permit for a period not to exceed one year if the permittee:

(1) violates the provisions of this chapter;

(2) violates reasonable rules promulgated under Section 29.031 of this code; or

(3) does not maintain his operation at the standards that entitled him to a permit under Section 29.013 of this code.

Amended by Acts 1977, 65th Leg., p. 1654, ch. 650, Sec. 1. Renumbered and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5266, ch. 967, Sec. 15, eff. Sept. 1, 1983.

Sec. 29.019. APPEAL. Any person whose permit application is refused, whose permit is suspended, or whose application for permit renewal is refused by the railroad commission may file a petition in an action to set aside the railroad commission's act within the 30-day period immediately following the day he receives notice of the railroad commission's action.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 29.020. SUIT TO COMPEL RAILROAD COMMISSION TO ACT. If the railroad commission does not act within a reasonable time after a person applies for a permit or for renewal of a permit, the applicant may notify the railroad commission of his intention to file suit. After 10 days have elapsed since the day the notice was given, the applicant may file a petition in an action to compel the railroad commission to show cause why it should not be directed by the court to take immediate action.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 29.021. VENUE. The venue in actions under Sections 29.019 and 29.020 of this code is fixed exclusively in the district courts of Travis County.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. COMMISSION AUTHORITY

Sec. 29.031. RULEMAKING POWER. The railroad commission shall adopt rules to effectuate the provisions of this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 5264, ch. 967, Sec. 12, eff. Sept. 1, 1983.

Sec. 29.032. COPIES OF RULES. The railroad commission shall print the rules and provide copies to persons who apply for them.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 5264, ch. 967, Sec. 12, eff. Sept. 1, 1983.

Sec. 29.033. EFFECTIVE DATE OF RULES. No rule or amendment to a rule is effective until after the 30-day period immediately following the day on which a copy of the rule is filed with the Secretary of State.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 5264, ch. 967, Sec. 12, eff. Sept. 1, 1983.

Sec. 29.034. ACCESS TO PROPERTY. Members and employees of the railroad commission, on proper identification, may enter public or

private property to inspect and investigate conditions relating to the hauling of oil and gas waste, to monitor compliance with a rule, permit, or other order of the railroad 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 posted safety, internal security, and fire protection rules.

Added by Acts 1983, 68th Leg., p. 5264, ch. 967, Sec. 12, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 603, Sec. 26, eff. Jan. 1, 1992.

SUBCHAPTER D. OFFENSES; PENALTIES

Sec. 29.041. HAULING WITHOUT PERMIT. No hauler may haul or dispose of oil and gas waste off the lease, unit, or other oil or gas property where it is generated unless the hauler has a permit issued under this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 603, Sec. 27, eff. Jan. 1, 1992.

Sec. 29.042. EXCEPTIONS. (a) A person may haul oil and gas waste for use in connection with drilling or servicing an oil or gas well without obtaining a hauler's permit under this chapter.

(b) The commission by rule may except from the permitting requirements of this chapter specific categories of oil and gas waste other than salt water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 603, Sec. 28, eff. Jan. 1, 1992.

Sec. 29.043. USING HAULERS WITHOUT PERMIT. No person may knowingly utilize the services of a hauler to haul or dispose of oil and gas waste off the lease, unit, or other oil or gas property where it is generated if the hauler does not have a permit as required under this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 603, Sec. 29, eff. Jan. 1, 1992.

Sec. 29.044. DISPOSING OF OIL AND GAS WASTE. (a) No hauler may dispose of oil and gas waste on public roads or on the surface of public land or private property in this state in other than a railroad commission-approved disposal facility without written authority from the railroad commission.

(b) No hauler may dispose of oil and gas waste on property of another in other than a railroad commission-approved disposal facility without the written authority of the landowner.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 603, Sec. 30, eff. Jan. 1, 1992.

Sec. 29.045. USE OF UNMARKED VEHICLES. No person who is required to have a permit under this chapter may haul oil and gas waste in a vehicle that does not bear the owner's name and the hauler's permit number. This information shall appear on both sides and the rear of the vehicle in characters not less than three inches high.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 603, Sec. 31, eff. Jan. 1, 1992.

Sec. 29.046. PENALTY. A person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 nor more than $1,000 or by confinement in the county jail for not more than 10 days or by both.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 29.047. ADMINISTRATIVE PENALTY. (a) If a person violates the provisions of this chapter or a rule, order, license, permit, or certificate issued under this chapter, the person may be assessed a civil penalty by the railroad 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 railroad 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. 1421, ch. 286, Sec. 7, eff. Aug. 29, 1983.

Sec. 29.048. PENALTY ASSESSMENT PROCEDURE. (a) A civil penalty may be assessed only after the permittee or person charged with a violation described under Section 29.047 of this code has been given an opportunity for a public hearing.

(b) If a public hearing has been held, the railroad 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 railroad commission shall consolidate the hearings with other proceedings under this chapter.

(d) If the permittee or person charged with the violation fails to avail himself of the opportunity for a public hearing, a civil penalty may be assessed by the railroad commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(e) The railroad commission shall then issue an order requiring that the penalty be paid.

Added by Acts 1983, 68th Leg., p. 1421, ch. 286, Sec. 7, eff. Aug. 29, 1983.

Sec. 29.049. PAYMENT OF PENALTY; REFUND. (a) On the issuance of an order finding that a violation has occurred, the railroad 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 railroad commission for placement in an escrow account; or

(B) in lieu of payment into escrow, post a supersedeas bond with the railroad commission under the following conditions. If the decision or order being appealed is the first final railroad commission decision or order assessing any administrative penalty against the person, the railroad 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 railroad commission may accept a supersedeas bond. Each supersedeas bond shall be for the amount of the penalty and in a form approved by the railroad 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 railroad commission shall, within the 30-day period immediately following that determination, if the penalty has been paid to the railroad commission, remit the appropriate amount to the person, with accrued interest, or where a supersedeas bond has been posted, the railroad commission shall execute a release of such bond.

(d) Failure to forward the money to the railroad 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 railroad 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. 1421, ch. 286, Sec. 7, eff. Aug.

29, 1983. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(53), (59), eff. Sept. 1, 1995.

Sec. 29.050. RECOVERY OF PENALTY. Civil penalties owed under Sections 29.047-29.049 of this code may be recovered in a civil action brought by the attorney general at the request of the railroad commission.

Added by Acts 1983, 68th Leg., p. 1421, ch. 286, Sec. 7, eff. Aug. 29, 1983.

SUBCHAPTER E. CIVIL ENFORCEMENT

Sec. 29.051. CIVIL PENALTY. (a) A person who violates this chapter, a rule or order of the railroad commission adopted under this chapter, or a term, condition, or provision of a permit issued under this chapter, is subject to a civil penalty of not to exceed $10,000 for each offense. Each day a violation is committed is a separate offense.

(b) An action to recover the penalty under Subsection (a) of this section may be brought by the railroad commission in any court of competent jurisdiction in the county in which the offending activity occurred, in which the defendant resides, or in Travis County.

Added by Acts 1983, 68th Leg., p. 5265, ch. 967, Sec. 13, eff. Sept. 1, 1983.

Sec. 29.052. INJUNCTION. The railroad commission may enforce this chapter, a valid rule or order made under this chapter, or a term or condition of a permit issued by the railroad commission under this chapter by injunction or other appropriate remedy. The action may be brought in a court of competent jurisdiction in the county in which the offending activity has occurred, in which the defendant resides, or in Travis County.

Added by Acts 1983, 68th Leg., p. 5265, ch. 967, Sec. 13, eff. Sept. 1, 1983.

Sec. 29.053. PROCEDURE. (a) At the request of the railroad commission, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief or other appropriate remedy or to recover a civil penalty as provided by Section 29.051 or 29.052 of this code or for both injunctive relief or other appropriate remedy and recovery of a civil penalty.

(b) A party to a suit may appeal from a final judgment as in other civil cases.

Added by Acts 1983, 68th Leg., p. 5265, ch. 967, Sec. 13, eff. Sept. 1, 1983.

CHAPTER 30. REGIONAL WASTE DISPOSAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 30.001. SHORT TITLE. This chapter may be cited as the Regional Waste Disposal Act.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.002. PURPOSE. The purpose of this chapter is to authorize public agencies to cooperate for the safe and economical collection, transportation, treatment, and disposal of waste in order to prevent and control pollution of water in the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.003. DEFINITIONS. In this chapter:

(1) "City" means any incorporated city or town, whether operating under general law or under its home-rule charter.

(2) "District" means any district or authority created and existing under Article XVI, Section 59 or Article III, Section 52 of the Texas Constitution, including any river authority.

(3) "Public agency" means any district, city, or other political subdivision or agency of the state which has the power to own and operate waste collection, transportation, treatment, or disposal facilities or systems, and any joint board created under the

provisions of Subchapter D or E, Chapter 22, Transportation Code.

(4) "River authority" means any district or authority created by the legislature which contains an area within its boundaries of one or more counties and which is governed by a board of directors appointed or designated in whole or in part by the governor, or by the Texas Water Development Board, including without limitation the San Antonio River Authority.

(5) "River basins" and "coastal basins" mean the river basins and coastal basins now defined and designated by the Texas Water Development Board as separate units for the purposes of water development and inter-watershed transfers, and as they are made certain by contour maps on file in the offices of the Texas Water Development Board, including but not limited to the rivers and their tributaries, streams, water, coastal water, sounds, estuaries, bays, lakes and portions of them, as well as the lands drained by them.

(6) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, waste heat, or other waste that may cause impairment of the quality of water in the state, including storm waters.

(7) The terms "sewage," "municipal waste," "recreational waste," "agricultural waste," "industrial waste," "other waste," "pollution," "water," or "water in the state," and "local government" shall have the meanings defined in Section 26.001 of this code.

(8) "Sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(9) "Treatment facility" means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement Chapter 26 of this code or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply, such as standby treatment units and clear well facilities; any works, including sites therefor and acquisition of the land that will be part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose

of treating, neutralizing, or stabilizing waste or facilities to provide for the collection, control, and disposal of waste heat.

(10) "Disposal system" means any system for disposing of waste, including sewer systems and treatment facilities.

(11) "Canal" means a man-made navigable channel or waterway of at least two miles in length.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 2185, ch. 834, Sec. 3, eff. Aug. 27, 1979; Acts 1985, 69th Leg., ch. 795, Sec. 1.133, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 165, Sec. 30.276, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1057, Sec. 8, eff. June 20, 2003.

Sec. 30.004. CUMULATIVE EFFECT OF CHAPTER. (a) This chapter is cumulative of other statutes governing the Texas Water Development Board and the Texas Natural Resource Conservation Commission relating to:

(1) the issuance of bonds;

(2) the collection, transportation, treatment, or disposal of waste; and

(3) the design, construction, acquisition, or approval of facilities for these purposes.

(b) The powers granted to districts and public agencies by this chapter are additional to and cumulative of the powers granted by other laws. This chapter is full authority for any district or public agency to enter into contracts authorized by it and for any district to authorize and issue bonds under its provisions without reference to the provisions of any other law or charter. No other law or charter provision which limits, restricts, or imposes additional requirements on matters authorized by this chapter shall apply to any action or proceeding under this chapter unless expressly provided to the contrary in this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.134, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.069, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.302, eff. Sept. 1, 1995.

Sec. 30.005. CONSTRUCTION OF CHAPTER. The terms and provisions of this chapter shall be liberally construed to accomplish its purposes.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. REGIONAL WASTE DISPOSAL SYSTEMS

Sec. 30.021. DISPOSAL SYSTEM. A district may acquire, construct, improve, enlarge, extend, repair, operate, and maintain one or more disposal systems.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.022. PURCHASE AND SALE OF FACILITIES. A district may contract with any person to purchase or sell by installments over such term as considered desirable any waste collection, transportation, treatment, or disposal facilities or systems.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.023. LEASE OF FACILITIES. A district may lease to or from any person for such term and on such conditions as may be considered desirable any waste collection, transportation, treatment, or disposal facilities or systems.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.024. OPERATING AGREEMENTS. A district may make operating agreements with any person for such terms and on such conditions as may be considered desirable for the operation of any waste collection, transportation, treatment, or disposal facilities or systems of any person by the district.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.025. WASTE DISPOSAL CONTRACTS BY DISTRICT. A district may make contracts with any person, including any public agency located inside or outside the boundaries of the district, under which the district will collect, transport, treat, or dispose of waste for the person.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.026. CONTRACTS BY RIVER AUTHORITY. Each river authority may make contracts authorized by this chapter with any person, including any public agency situated wholly or partly inside its boundaries and any public agency situated wholly or partly inside the river basin and any public agency situated wholly or partly inside the coastal basins adjoining its boundaries, but a river authority may not make contracts to serve a public agency situated wholly inside the boundaries of another river authority or to serve facilities of a person situated wholly within the boundaries of another river authority, except with the consent of the other river authority.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.027. CONTRACT WITH PUBLIC AGENCY. A public agency may make contracts with a district under which the district will make a disposal system available to the public agency and will furnish waste collection, transportation, treatment, and disposal services to the public agency, group of public agencies, or other persons through the district's disposal system.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.028. CONTRACT PROVISIONS. (a) The contract may provide for:

(1) duration of the contract for a specified period or until issued and unissued bonds and refunding bonds of the district are paid;

(2) assuring equitable treatment of parties who contract with the district for waste collection, transportation, treatment, and disposal services from the same disposal system;

(3) requiring the public agency to regulate the quality and strength of waste to be handled by the disposal system;

(4) sale or lease to or use by a district of all or part of a disposal system owned or to be acquired by the public agency;

(5) the district operating all or part of a disposal system owned or to be acquired by the public agency; and

(6) other terms the district or the governing body of the public agency consider appropriate or necessary.

(b) The contract shall specify the method for determining the amounts to be paid by the public agency to the district.

(c) A contract made by a city may provide that the district shall have the right to use the streets, alleys, and public ways and places inside the city during the term of the contract.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.029. CONTINUED USE OF DISTRICT FACILITIES. After amortization of the district's investment in the disposal system, the public agency is entitled to continued performance of the service during the useful life of the disposal system, on payment of reasonable charges reduced to take into consideration the amortization.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.030. SOURCE OF CONTRACT PAYMENTS. (a) A public agency may pay for the waste collection, transportation, treatment, and disposal services with income from its waterworks system, sanitary sewer system, or both systems, or its combined water and sanitary

sewer system, as prescribed by the contract. In the alternative, a joint board defined as a public agency in Section 30.003, Subdivision (3), may pay for these services from any revenue or other funds within its control specified in the contract if the city councils of the cities which created the joint board approve, by ordinance, the contract between the joint board and the district. These payments constitute an operating expense of each system whose revenue is so used.

(b) The obligation of contract payments on the income of the public agency's water system is subordinate to the obligation imposed by any bonds that are payable solely from the water system net revenue and that are outstanding at the time the contract is made, unless the ordinance or resolution authorizing the bonds expressly reserved the right to give the contract payments a priority over the bond requirements.

(c) If a public agency having taxing power holds an election substantially according to the applicable provisions of Chapter 1251, Government Code, relating to the issuance of bonds by cities and it is determined that the public agency is authorized to levy an ad valorem tax to make all or part of the payments under a contract with a district, then the contract is an obligation against the taxing power of the public agency to the extent authorized, and payments under the contract may be payable from and constitute solely an obligation against the taxing powers of the city or may be payable both from taxes and from revenue prescribed in the contract. Otherwise, neither the district nor the holders of the district's bonds are entitled to demand payment of the public agency's obligation out of any tax revenue.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 1420, Sec. 8.419, eff. Sept. 1, 2001.

Sec. 30.031. RATES. (a) When all or part of the payments under a contract are to be made from revenue of the waterworks system, sanitary sewer system, both systems, or a combination of both systems, the public agency shall establish, maintain, and periodically adjust the rates charged for services of the systems, so that the revenue, along with any taxes levied in support of the

indebtedness, will be sufficient to pay:

(1) the expenses of operating and maintaining the systems;

(2) the obligations to the district under the contract; and

(3) the obligations of bonds that are secured by revenue of the systems.

(b) The contract may require the use of consulting engineers and financial experts to advise the public agency on the need for adjusting rates.

(c) Notwithstanding any provision of this chapter or any other law to the contrary, a district may use the proceeds of bonds issued for the purpose of constructing a waste disposal system or systems, and payable wholly or in part from ad valorem taxes, for the purchase of capacity in, or a right to have the wastes of the district treated in, a waste collection, treatment, or disposal system and facilities owned or to be owned exclusively or in part by another public agency, and a district may issue bonds payable wholly or in part from ad valorem taxes specifically for such purpose if a majority of the resident electors of the district have authorized the governing body of the district to issue bonds for that purpose or for the purpose of constructing a waste disposal system or systems. The bonds shall be issued in accordance with the provisions of, and shall be subject to the same terms and conditions of, the laws authorizing the district to issue bonds for the purpose of constructing waste collection, treatment, and disposal systems, except as otherwise provided in this subsection.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.032. SERVICE TO MORE THAN ONE PUBLIC AGENCY. A contract or group of contracts may provide for the district to render services concurrently to more than one person through constructing and operating a disposal system and may provide that the cost of these services be allocated among the persons as provided in the contract or group of contracts.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.033. PROPERTY ACQUIRED BY CONDEMNATION OR OTHERWISE. (a) To accomplish the purposes of this chapter, a district may acquire by purchase, lease, gift, or in any other manner all or any interest in property inside or outside the boundaries of the district and may own, maintain, use, and operate it.

(b) To accomplish the purposes of the chapter, a district may exercise the power of eminent domain to acquire all or any interest in property inside or outside the boundaries of the district. The power shall be exercised according to the laws applicable or available to the district.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.034. COST OF RELOCATING, ALTERING, ETC. If a district makes necessary the relocating, raising, rerouting, changing the grade of, or altering the construction of any highway, railroad, electric transmission line, pipeline, or telephone or telegraph properties or facilities in the exercise of powers granted under this chapter, the district shall pay all of the actual cost of the relocating, raising, rerouting, changing in grade, or altering of construction and shall pay all of the actual cost of providing comparable replacement of facilities without enhancement, less the net salvage value of the facilities.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.035. ELECTIONS. No election is required for the exercise of any power under this chapter except for the tax levy as provided by Section 30.030(c) of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. DISTRICT REVENUE BONDS

Sec. 30.051. ISSUANCE OF BONDS. In order to acquire, construct, improve, enlarge, extend, or repair disposal systems, the

district may issue bonds secured by a pledge of all or part of the revenue from any contract entered into under this chapter and other income of the district.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.052. FORM, DENOMINATION, INTEREST RATE. The governing body of the district shall prescribe the form, denomination, and rate of interest for the bonds.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.053. REFUNDING BONDS. A district may refund any bonds issued under this chapter on the terms and conditions and at the rate of interest the governing body prescribes.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.054. SALE OR EXCHANGE OF BONDS. A district may sell bonds issued under this chapter at public or private sale at the price or prices and on the terms determined by the governing body, or it may exchange the bonds for property or any interest in property of any kind considered necessary or convenient to the purposes authorized in this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.055. INTERIM BONDS. Pending the issuance of definitive bonds, a district may issue negotiable interim bonds or obligations eligible for exchange or substitution by use of definitive bonds.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.056. ATTORNEY GENERAL'S EXAMINATION. (a) After issuance of the bonds is authorized, the bonds and the record relating to their issuance may be submitted to the attorney general for examination.

(b) When the bonds recite that they are secured by a pledge of the proceeds from a contract between the district and a public agency, a copy of the contract and the proceedings of the public agency authorizing the contract may also be submitted to the attorney general.

(c) If the attorney general finds that the bonds are authorized and that the contract is made in accordance with the constitution and laws of this state, he shall approve the bonds and the contract.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.057. REGISTRATION BY COMPTROLLER. After the bonds have been approved by the attorney general, they shall be registered by the state comptroller.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.058. VALIDATION SUIT. (a) Instead of or in addition to obtaining the approval of the attorney general, the district may have the bonds validated by suit in the district court as provided in Chapter 1205, Government Code.

(b) The governing body of the district may wait until after termination of the validation suit to fix the interest rate and sale price of the bonds.

(c) If the proposed bonds recite that they are secured by the proceeds of a contract between the district and a public agency, the petition shall so allege, and the notice of the suit shall mention this allegation and shall specify the public agency's funds or revenues from which the contract payments are to be made.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept.

1, 1977; Acts 2001, 77th Leg., ch. 1420, Sec. 8.420, eff. Sept. 1, 2001.

Sec. 30.059. BONDS INCONTESTABLE. After the bonds are approved by the attorney general and registered with the comptroller, the bonds and the contract are incontestable.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.060. NEGOTIABLE INSTRUMENTS. Bonds issued under this subchapter are negotiable instruments.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.061. INVESTMENT SECURITIES UNDER UNIFORM COMMERCIAL CODE. Bonds issued under this subchapter are investment securities governed by Chapter 8, Uniform Commercial Code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.062. BONDS AS AUTHORIZED INVESTMENTS. Bonds issued under this chapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees, and for the sinking funds of cities, towns, villages, school districts, and other political corporations or subdivisions of the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.063. SECURITY FOR DEPOSITS. The bonds are eligible to secure deposits of any public funds of the state or any political

subdivision of the state and are lawful and sufficient security for the deposits to the extent of their value when accompanied by unmatured coupons attached to the bonds.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.064. FUNDS SET ASIDE FROM BOND PROCEEDS. The district may set aside out of the proceeds from the sale of bonds:

(1) interest to accrue on the bonds and administrative expenses to the estimated date when the disposal system will become revenue producing; and

(2) reserve funds created by the resolution authorizing the bonds.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.065. INVESTMENT OF PROCEEDS. Pending their use, proceeds from the sale of bonds may be invested in securities or time deposits as specified in the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds. The earnings on these investments shall be applied as provided in the resolution or trust indenture.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.066. RATES AND CHARGES. While any bonds are outstanding, the governing body of the district shall fix, maintain, and collect for services furnished or made available by the disposal system rates and charges adequate to:

(1) pay maintenance and operating costs of and expenses allocable to the disposal system;

(2) pay the principal of and interest on the bonds; and

(3) provide and maintain the funds created by the resolution authorizing the bonds.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. RIVER AUTHORITY PLANNING

Sec. 30.101. AUTHORIZATION OF REGIONAL PLANS. Each river authority may prepare regional plans for water quality management, control, and abatement of pollution in any segment of its river basin and adjoining coastal basins which:

(1) are consistent with any applicable water quality standards established under current law within the river basin;

(2) recommend disposal systems which will provide the most effective and economical means of collection, storage, treatment, and purification of waste, and means to encourage rural, municipal, and industrial use of the works and systems; and

(3) recommend maintenance and improvement of water quality standards within the river basin and methods of adequately financing the facilities necessary to implement the plan.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.102. PLANNING IN RELATED FIELDS. River authorities may conduct planning in related or affected fields reasonably necessary to give meaning to the water quality management and pollution control planning carried out under this subchapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.103. JOINT PLANNING. (a) River authorities may join in the performance of planning functions with any district or public agency and enter into planning agreements for the term and on the conditions considered desirable to provide coordinated planning on a basin-wide scale, including adjacent coastal basins.

(b) River authorities may provide for river basin planning committees as entities with powers, responsibilities, functions, and duties conferred by mutual agreement.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.104. COORDINATION WITH OTHER PLANNING AGENCIES. A river authority performing planning functions under this subchapter shall coordinate its efforts and cooperate with other public planning agencies having significant planning interests in any segment of the river basin in or for which the planning is being conducted by the river authority.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.105. FINANCIAL ASSISTANCE. River authorities may make applications and enter into contracts for financial assistance in comprehensive planning which are appropriate under Section 3(c) of the Federal Water Pollution Control Act, as amended under 33 U.S.C. Section 1926 et seq., under 40 U.S.C. Section 461 et seq., and under any other relevant statutes.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 30.106. SUPERVISION BY TEXAS NATURAL RESOURCE CONSERVATION COMMISSION. The Texas Natural Resource Conservation Commission is authorized to exercise continuing supervision on behalf of the state of comprehensive plans prepared under this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.135, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.070, eff. Aug. 12, 1991.

CHAPTER 31. SUBSURFACE EXCAVATIONS

Sec. 31.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(3) "Ground movement" means any horizontal or vertical displacement of the strata, including the earth surface, resulting from or related to activities of subsurface construction, operation, or use including subsidence, uplift, shear along shaft walls, or other disturbance of the natural strata or land surface.

(4) "Industrial waste" means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business, including runoff water from mined materials and associated solids storage or disposal areas.

(5) "Permit" means a subsurface excavation permit issued by the commission.

(6) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(7) "Pollution" means alteration of the physical, thermal, chemical, or biological quality of or the contamination of water in the state that:

(A) makes the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare; or

(B) impairs the usefulness or the public enjoyment of the water for a lawful or reasonable purpose.

(8) "Spoils" means material removed from subsurface excavations and brought to the land surface for storage or disposal.

(9) "Subsurface excavation" means shafts and underground workings but does not include excavations associated with the exploration, development, and production of oil, gas, or geothermal sources and does not include excavations designed to serve as permanent tunnels.

(10) "Underground workings" means an excavation below the land surface connected to and associated with shafts, including adits, raises or inclines, tunnels, rooms, drifts, shaft stations, and chambers, that:

(A) penetrate into, through, or below the uppermost water-bearing strata; and

(B) are used for access, transportation of persons and materials, ventilation, storage, or removal of materials.

(11) "Water" or "water in the state" means groundwater,

percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of natural and artificial surface water that are inland or coastal, fresh or salt, and navigable or nonnavigable and includes the beds and banks of all watercourses and bodies of surface water that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(12) "Water inflow" means water movement into subsurface excavations from surface or subsurface sources, including:

(A) inrushes from underground isolated water pockets and from fault conduits; and

(B) flow from:

(i) primary and natural or induced secondary permeability;

(ii) manmade conduits such as shafts, adjacent underground workings, subsidence fractures, and open, plugged, or abandoned boreholes; and

(iii) surface flooding.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.303, eff. Sept. 1, 1995.

Sec. 31.002. APPLICABILITY. This chapter does not apply to:

(1) subsurface excavations conducted under Chapters 52 and 53 of the Natural Resources Code if the commissioner of the General Land Office determines that the subsurface excavation does not adversely affect water as defined by this chapter; or

(2) facilities or activities covered by Chapter 26 or 27 of this code or Chapter 361, Health and Safety Code.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(75), eff. Sept. 1, 1991.

Sec. 31.003. PERMIT FROM COMMISSION. A person desiring to drill, excavate, or otherwise construct a subsurface excavation may not begin construction without first obtaining a permit for the work

from the commission.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989.

Sec. 31.004. APPLICATION FOR PERMIT. The commission shall prescribe forms for a permit application and shall make the forms available on request without charge.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989.

Sec. 31.005. INFORMATION REQUIRED OF APPLICANT. An applicant shall furnish any information the commission considers necessary to discharge its duties under this chapter and the rules of the commission.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989.

Sec. 31.006. CONTENTS OF PERMIT APPLICATION. (a) The executive director shall set the requirements for the permit application after determining the local conditions and potential or probable effect of the subsurface excavations on water in the state.

(b) The permit application must include plans for:

(1) setting of any casing, liners, and seals for the shaft and underground workings;

(2) ground movement control, including subsidence, strata and roof control, and shaft pillar dimensions;

(3) water inflow management;

(4) spoils and industrial waste management, including plans for the management of the surface storage of spoils or industrial waste in a manner that will not harm adjacent surface property if the adjacent property is used for agricultural purposes;

(5) mitigation and monitoring of water pollution; and

(6) restoration, closure, and decommissioning of the subsurface excavations.

(c) The permit application may include additional requirements

as determined by the executive director.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989.

Sec. 31.007. APPLICATION FEE. With each application for a permit, the commission shall collect a fee as set by the executive director to reasonably offset the costs to the commission for processing the application. The fee may not be less than $1,000.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989.

Sec. 31.008. HEARING ON PERMIT APPLICATION. (a) The commission may hold an adjudicatory hearing on the application.

(b) The commission by rule shall provide for giving notice of a public hearing on a permit application. The rules for notice must include provisions for giving notice to local governments and interested persons.

(c) A hearing held under Subsection (a) of this section shall be conducted in accordance with rules for contested cases under Chapter 2001, Government Code. A person shall be allowed to participate in a hearing as a party under this section on a showing of sufficient interest or of an ability to contribute to the resolution of relevant issues.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 31.009. DELEGATION OF HEARING POWERS. (a) The commission may authorize the chief administrative law judge of the State Office of Administrative Hearings to call and hold hearings on any subject on which the commission may hold a hearing.

(b) The commission may also authorize the chief administrative law judge to delegate to one or more administrative law judges the authority to hold a hearing the chief administrative law judge calls.

(c) At a hearing called under this section, the chief

administrative law judge or the administrative law judge to whom a hearing is delegated may administer oaths and receive evidence.

(d) The individual or individuals holding a hearing under the authority of this section shall report the hearing in the manner prescribed by the commission.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 106, Sec. 5, eff. Sept. 1, 1995.

Sec. 31.010. RULES. (a) The commission shall adopt rules reasonably required for the performance of the powers, duties, and functions of the commission under this chapter.

(b) Rules adopted under this section shall be published as proposed rules, as prescribed by Chapter 2001, Government Code.

(c) A permit may not be issued by the commission under this chapter and a permit hearing may not be held on a permit application until the commission has adopted rules for the issuance of permits.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 31.011. PENDING LITIGATION. The commission may refuse to accept a permit application or hold a permit application hearing if any aspect of the siting, construction, use, or decommissioning of the subsurface excavation is the subject of litigation.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989.

Sec. 31.012. ISSUANCE OF PERMIT. (a) The commission may grant an application in whole or part and may issue the permit if it finds that:

(1) the construction or use of the subsurface excavation is in the public interest and that after consideration of all alternative sites there is a public need for construction of the subsurface excavation at the location for which the application is

made;

(2) existing rights, including mineral rights, water rights, and adjacent surface rights, are not impaired;

(3) any surface storage of spoils or industrial waste will not harm adjacent surface property used for agricultural purposes;

(4) with proper safeguards, both groundwater and surface water can be adequately protected from pollution; and

(5) the applicant has made a satisfactory showing of financial responsibility if required by Section 31.018(b) of this code.

(b) In the permit the commission shall impose terms and conditions reasonably necessary to protect all water from pollution.

(c) In the permit the commission shall impose terms and conditions for final closure of surface facilities, plugging and sealing of the subsurface excavations, management of spoils and industrial waste, and ground movement control measures reasonably necessary to protect all water penetrated from pollution.

(d) The use of a subsurface excavation for a purpose other than one stated in the permit is prohibited.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989.

Sec. 31.013. PERFORMANCE STANDARDS. (a) The commission shall adopt rules and performance standards to govern the granting of permits under this chapter and may impose additional requirements it considers necessary.

(b) A permit issued under this chapter must require that the subsurface construction and operations meet all applicable performance standards of this chapter and performance standards adopted by the commission relating to:

(1) construction, operation, closure, and decommissioning;

(2) casings, liners, and seals for subsurface excavations;

(3) water inflow management and disposal;

(4) ground movement control;

(5) roof control and shaft pillar dimensions; and

(6) spoils and industrial waste management and disposal.

(c) The permittee shall provide records as required by the executive director to indicate compliance with Subsections (a) and

(b) of this section.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989.

Sec. 31.014. ADDITIONAL PERMIT CONSIDERATIONS. When determining the terms and conditions of the permit, the commission shall consider:

(1) known and expected geological and hydrological conditions and relationships;

(2) present and future economic development in the area; and

(3) present and future demand for the use of fresh water in the locality.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989.

Sec. 31.015. ENVIRONMENTAL REPORT. If an environmental report, environmental assessment, or environmental impact statement of any kind that includes an analysis of the environmental impacts of the subsurface excavation construction, operation, closure, or decommissioning is required by any federal or state agency before approval to construct the subsurface excavation, the environmental document, along with evidence of the needed approvals that have been granted, must be submitted to the commission as part of the permit application, and the commission shall make the environmental document available for public review and comment for a period of not less than 30 days before the application for the permit is considered.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989.

Sec. 31.016. POWER TO ENTER PROPERTY. Members of the commission, employees and agents of the commission, and authorized agents or employees of local governments may enter public or private property at any time to inspect and investigate conditions relating to subsurface excavation activities or to monitor compliance with a

rule, permit, or other order of the commission. Members, employees, or agents 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 and shall give notice before entering the property to the person in charge of the property in the manner, form, and time provided by commission rule.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989.

Sec. 31.017. POWER TO EXAMINE RECORDS. Members of the commission, employees and agents of the commission, and authorized agents or employees of local governments may examine and copy those records or memoranda of a permittee or his contractors they are investigating or monitoring as provided by Section 31.016 of this code that relate to the construction and operation of a subsurface excavation or any other records required to be maintained by law.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989.

Sec. 31.018. FINANCIAL RESPONSIBILITY. (a) The commission may require in a permit that the permittee reimburse the commission for reasonable costs of monitoring and on-site, full-time surveillance to determine compliance with a rule, permit, or other order of the commission.

(b) A person to whom a permit is issued may be required by the commission to maintain a performance bond or other form of financial security to ensure payment of costs that may become due in accordance with Subsection (a) of this section or to ensure that an abandoned subsurface excavation is safely and properly sealed and that the land surface affected by any subsurface construction and operation is restored to conditions as stated in the permit.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 15.02(a), eff. Aug. 28, 1989.

CHAPTER 32. SUBSURFACE AREA DRIP DISPERSAL SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. SHORT TITLE. This chapter may be cited as the Subsurface Area Drip Dispersal System Act.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Commercial, industrial, or municipal waste":

(A) means any water-dominant liquid waste substance that may cause or might reasonably be expected to cause pollution of fresh water and that may result from:

(i) processes of industry, manufacturing, trade, or business;

(ii) development or recovery of natural resources, except as provided by Paragraph (B); or

(iii) disposal of sewage or other wastes of cities, towns, villages, communities, water districts, other municipal corporations, educational facilities, apartment complexes, and other commercial facilities; and

(B) does not include:

(i) oil and gas waste, as defined by Section 27.002;

(ii) tar sands;

(iii) sulfur;

(iv) brine from desalination; or

(v) hazardous waste, as defined by Section 361.003, Health and Safety Code.

(3) "Department" means the Department of State Health Services.

(4) "Executive director" means the executive director of the commission.

(5) "Fresh water" has the meaning assigned by Section 27.002.

(6) "Pollution" has the meaning assigned by Section 27.002.

(7) "Processed" means the action of reducing liquid waste

to a state that will allow injection by subsurface drip dispersal into an area without creating pollution.

(8) "Subsurface area drip dispersal system" means a waste disposal system that injects processed commercial, industrial, or municipal waste into the ground at a depth of not more than 48 inches and spreads the waste over a large enough area that the soil hydrologic absorption rate and crop/plant root absorption rate are not exceeded.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.003. POLICY AND PURPOSE. It is the policy of this state and the purpose of this chapter to:

(1) maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and the operation of existing industries;

(2) promote the beneficial reuse of commercial, industrial, and municipal waste for the economic development of the state, thereby reducing the demand on the state's supply of fresh water;

(3) prevent underground injection that may pollute fresh water; and

(4) require the use of all reasonable methods to implement this policy.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

SUBCHAPTER B. JURISDICTION OF COMMISSION

Sec. 32.051. PERMIT FROM COMMISSION. A person may not operate a subsurface area drip dispersal system without first obtaining a permit from the commission.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.052. APPLICATION FOR PERMIT. The commission shall prescribe forms for application for a permit and shall make the forms

available on request without charge.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.053. INFORMATION REQUIRED OF APPLICANT. An applicant shall furnish any information the executive director considers necessary to discharge the executive director's duties under this chapter and the rules of the commission.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.054. INSPECTION OF DISPERSION AREA. On receiving an application for a permit, the executive director shall inspect the location of the proposed dispersion area to determine the local conditions and the probable effect of the subsurface area drip dispersal system.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.055. RECOMMENDATIONS FROM OTHER PERSONS. The executive director shall submit to the department and to other persons designated by the commission copies of each permit application received in proper form. A person to whom an application is submitted may make recommendations to the commission concerning any aspect of the application not later than the 30th day after the date the application is submitted.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.056. HEARING ON PERMIT APPLICATION. (a) In this section, "local government" has the meaning assigned by Section 26.001.

(b) The commission may hold a public hearing on a permit

application for a subsurface area drip dispersal system if the commission determines that a hearing is necessary and in the public interest.

(c) The commission shall hold a public hearing on a permit application for a subsurface area drip dispersal system if a hearing is requested by a local government located in the county of the proposed disposal site or by an affected person.

(d) The commission by rule shall provide for giving notice of the opportunity to request a public hearing on a permit application. The rules for notice shall include provisions for giving notice to local governments and affected persons.

(e) Before the commission begins to hear the testimony in a contested case as defined by Chapter 2001, Government Code, evidence must be placed in the record to demonstrate that proper notice regarding the hearing was given to affected persons. If mailed notice to an affected person is required, the commission or other party to the hearing shall place evidence in the record that notice was mailed to the address of the affected person included in the appropriate county tax rolls at the time of mailing. For the purposes of this subsection, the affidavit of the commission employee responsible for the mailing of the notice, attesting to the fact that notice was mailed to the address included in the tax rolls at the time of mailing, shall be prima facie evidence of proper mailing. The commission may not proceed with receipt of testimony in a contested case until the requirements of this subsection are complied with.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.057. OPPORTUNITY TO COMMENT ON PROPOSED RULES. The commission shall send copies of proposed rules under this chapter to the department and any other persons designated by the commission. A person to whom the copies of proposed rules are sent may submit comments and recommendations to the commission and shall have a reasonable time to do so as determined by the commission.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

SUBCHAPTER C. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

Sec. 32.101. ISSUANCE OF PERMIT. (a) The commission may grant an application for a permit for a subsurface area drip dispersal system in whole or part and may issue the permit if it finds that:

(1) the use or installation of the system is in the public interest;

(2) with proper safeguards, both subsurface and surface fresh water can be adequately protected from pollution; and

(3) the applicant has provided for the proper operation of the system.

(b) In the permit, the commission shall impose terms and conditions reasonably necessary to protect fresh water from pollution.

(c) The commission, in determining if the use or installation of a subsurface area drip dispersal system is in the public interest under Subsection (a)(1), shall consider:

(1) compliance history of the applicant and related entities under the method for using compliance history developed by the commission under Section 5.754 and in accordance with the provisions of Subsection (d) of this section;

(2) whether there is a practical, economic, and feasible alternative to a subsurface area drip dispersal system reasonably available; and

(3) any other factor the commission considers relevant.

(d) The commission shall establish a procedure for the preparation of comprehensive summaries of the applicant's compliance history, including the compliance history of any corporation or other business entity managed, owned, or otherwise closely related to the applicant. The summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and prior to giving public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for a subsurface area drip dispersal system permit with environmental statutes and the rules adopted or orders or permits issued by the commission may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. Evidence of the compliance history of an applicant for a subsurface area drip dispersal system permit may be offered by the executive director at a hearing on the application and admitted into evidence

subject to the rules of evidence. The commission shall consider all evidence admitted, including compliance history, in determining whether to issue, amend, extend, or renew a permit. If the commission concludes that the applicant's compliance history is unacceptable, the commission shall deny the permit.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.22, eff. September 1, 2011.

Sec. 32.102. COPIES OF PERMIT FILING REQUIREMENTS. (a) The commission shall send to the department a copy of each permit issued under this chapter.

(b) Before beginning injection operations, a person receiving a permit for a subsurface area drip dispersal system shall file a copy of the permit with the applicable local health authorities of the area in which the system is located.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

SUBCHAPTER D. GENERAL POWERS

Sec. 32.151. POWER TO ENTER PROPERTY. A member or employee of the commission or an authorized agent or employee of a local government may enter public or private property to inspect and investigate conditions relating to a subsurface area drip dispersal system in connection with subsurface drip dispersal activities or to monitor compliance with a rule, permit, or order of the commission. A member or employee acting under the authority of this section who enters an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

Sec. 32.152. POWER TO EXAMINE RECORDS. A member or employee of the commission or an authorized agent or employee of a local government may examine and copy any record or memorandum of a business the member, employee, or agent is investigating as provided by Section 32.151 that relates to the operation of a subsurface area drip dispersal system or any other record the commission requires the business to maintain.

Added by Acts 2005, 79th Leg., Ch. 637 (H.B. 2651), Sec. 1, eff. June 17, 2005.

SUBTITLE E. GROUNDWATER MANAGEMENT

CHAPTER 35. GROUNDWATER STUDIES

Sec. 35.001. PURPOSE. In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of the groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater management areas may be created as provided by this chapter.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 35.002. DEFINITIONS. In this chapter:

(1) "District" means any district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive director" means the executive director of the commission.

(4) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(5) "Groundwater" means water percolating below the surface of the earth.

(6) "Groundwater reservoir" means a specific subsurface water-bearing reservoir having ascertainable boundaries containing

groundwater.

(7) "Subdivision of a groundwater reservoir" means a definable part of a groundwater reservoir in which the groundwater supply will not be appreciably affected by withdrawing water from any other part of the reservoir, as indicated by known geological and hydrological conditions and relationships and on foreseeable economic development at the time the subdivision is designated or altered.

(8) "Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.

(9) "Board" means the board of directors of a district.

(10) "Director" means a member of a board.

(11) "Management area" means an area designated and delineated by the Texas Water Development Board as an area suitable for management of groundwater resources.

(12) "Priority groundwater management area" means an area designated and delineated by the commission as an area that is experiencing or is expected to experience critical groundwater problems.

(13) "Political subdivision" means a county, municipality, or other body politic or corporate of the state, including a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a state agency, or a nonprofit water supply corporation created under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.10, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.21, eff. Sept. 1, 2001.

Sec. 35.003. SURFACE WATER LAWS NOT APPLICABLE. The laws and administrative rules relating to the use of surface water do not apply to groundwater.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 35.004. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS. (a) The Texas Water Development Board, with assistance and cooperation from the commission, shall designate groundwater management areas

covering all major and minor aquifers in the state. The initial designation of groundwater management areas shall be completed not later than September 1, 2003. Each groundwater management area shall be designated with the objective of providing the most suitable area for the management of the groundwater resources. To the extent feasible, the groundwater management area shall coincide with the boundaries of a groundwater reservoir or a subdivision of a groundwater reservoir. The Texas Water Development Board also may consider other factors, including the boundaries of political subdivisions.

(b) The commission may designate a groundwater management area after September 1, 2001, for a petition filed and accepted by the commission according to its rules in effect before September 1, 2001. The commission shall act on the designation in accordance with this section.

(c) The Texas Water Development Board may alter the boundaries of designated management areas as required by future conditions and as justified by factual data. An alteration of boundaries does not invalidate the previous creation of any district.

(d) The Texas Water Development Board shall designate groundwater management areas using the procedures applicable to rulemaking under Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.22, eff. Sept. 1, 2001.

Sec. 35.007. IDENTIFYING, DESIGNATING, AND DELINEATING PRIORITY GROUNDWATER MANAGEMENT AREAS. (a) The executive director and the executive administrator shall meet periodically to identify, based on information gathered by the commission and the Texas Water Development Board, those areas of the state that are experiencing or that are expected to experience, within the immediately following 50-year period, critical groundwater problems, including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies. Not later than September 1, 2005, the commission, with assistance and cooperation from the Texas Water Development Board, shall complete the initial designation of priority groundwater management areas

across all major and minor aquifers of the state for all areas that meet the criteria for that designation. The studies may be prioritized considering information from the regional planning process, information from the Texas Water Development Board groundwater management areas and from groundwater conservation districts, and any other information available. After the initial designation of priority groundwater management areas, the commission and the Texas Water Development Board shall annually review the need for additional designations as provided by this subsection.

(b) If the executive director concludes that an area of the state should be considered for designation as a priority groundwater management area, the executive director shall prepare a report to the commission.

(c) Before the executive director requests a study from the executive administrator under Subsection (d), the executive director shall provide notice to the persons listed in Section 35.009(c) of areas being considered for identification as experiencing or expected to experience critical groundwater problems and shall consider any information or studies submitted under this subsection. Not later than the 45th day after the date of the notice, a person required to receive notice under this subsection may submit to the executive director information or studies that address the potential effects on an area of being identified as experiencing or expected to experience critical groundwater problems.

(d) The executive director shall begin preparation of a priority groundwater management area report by requesting a study from the executive administrator. The study must:

(1) include an appraisal of the hydrogeology of the area and matters within the Texas Water Development Board's planning expertise relevant to the area;

(2) assess the area's immediate, short-term, and long-term water supply and needs; and

(3) be completed and delivered to the executive director on or before the 180th day following the date of the request. If the study is not delivered within this 180-day period, the executive director may proceed with the preparation of the report.

(e) The executive director shall request a study from the executive director of the Parks and Wildlife Department for the purpose of preparing the report required by this section. The Department of Agriculture may also provide input to the executive

director for purposes of the report. The study must:

(1) evaluate the potential effects of the designation of a priority groundwater management area on an area's natural resources; and

(2) be completed and delivered to the executive director on or before the 180th day following the date of the request. If the study is not delivered within this 180-day period, the executive director may proceed with the preparation of the report.

(f) The report shall include:

(1) the recommended delineation of the boundaries of any proposed priority groundwater management area in the form of an order to be considered for adoption by the commission;

(2) the reasons and supporting information for or against designating the area as a priority groundwater management area;

(3) a recommendation regarding whether one or more districts should be created in the priority groundwater management area, whether the priority groundwater management area should be added to an existing district, or whether a combination of those actions should be taken;

(4) a recommendation as to actions that should be considered to conserve natural resources;

(5) an evaluation of information or studies submitted to the executive director under Subsection (c); and

(6) any other information that the executive director considers helpful to the commission.

(g) The executive director must complete the report and file it with the commission on or before the 240th day following the date on which the executive administrator was requested to produce a study. The executive director shall make the report available for public inspection by providing a copy of the report to at least one public library and the county clerk's office in each county in which the proposed priority groundwater management area is located and to all districts adjacent to the area of the proposed priority groundwater management area.

(h) To carry out this section, the executive director may make necessary studies, hold hearings, solicit and collect information, and use information already prepared by the executive director or the executive administrator for other purposes.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.11, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 10, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 12, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.23, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 886 (S.B. 313), Sec. 1, eff. June 17, 2011.

Sec. 35.008. PROCEDURES FOR DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA; CONSIDERATION OF CREATION OF NEW DISTRICT OR ADDITION OF LAND IN PRIORITY GROUNDWATER MANAGEMENT AREA TO EXISTING DISTRICT; COMMISSION ORDER. (a) The commission shall designate priority groundwater management areas using the procedures provided by this chapter in lieu of those provided by Subchapter B, Chapter 2001, Government Code.

(b) The commission shall call an evidentiary hearing to consider:

(1) the designation of a priority groundwater management area; and

(2) whether one or more districts should be created over all or part of a priority groundwater management area, all or part of the land in the priority groundwater management area should be added to an existing district, or a combination of those actions should be taken. Consideration of this issue shall include a determination of whether a district is feasible and practicable.

(c) Evidentiary hearings shall be held at a location in one of the counties in which the priority groundwater management area is located, or proposed to be located, or in the nearest convenient location if adequate facilities are not available in those counties.

(d) At the hearing, the commission shall hear testimony and receive evidence from affected persons. Affected persons shall include landowners, well owners, and other users of groundwater in the proposed priority groundwater management area. The commission shall consider the executive director's report and supporting information and the testimony and evidence received at the hearing. If the commission considers further information necessary, the commission may request such information from any source.

(e) Any evidentiary hearing shall be concluded not later than the 75th day after the date notice of the hearing is published.

(f) At the conclusion of the hearing and the commission's considerations, the commission shall issue an order stating its findings and conclusions, including whether a priority groundwater management area should be designated in the area and recommendations regarding district creation as set forth in Subsection (g).

(g) The commission's order designating a priority groundwater management area must recommend that the area be covered by a district in any of the following ways:

(1) creation of one or more new districts;

(2) addition of the land in the priority groundwater management area to one or more existing districts; or

(3) a combination of actions under Subdivisions (1) and (2).

(h) In recommending the boundaries of a district or districts under Subsection (g), the commission shall give preference to boundaries that are coterminous with those of the priority groundwater management area, but may recommend district boundaries along existing political subdivision boundaries at the discretion of the commission to facilitate district creation and confirmation.

(i) The designation of a priority groundwater management area may not be appealed nor may it be challenged under Section 5.351 of this code or Section 2001.038, Government Code.

(j) The commission may adopt rules regarding:

(1) the creation of a district over all or part of a priority groundwater management area that was designated as a critical area under Chapter 35, Water Code, as that chapter existed before September 1, 1997, or under other prior law; and

(2) the addition of all or part of the land in a priority groundwater management area described by Subdivision (1) to an existing district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.12, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.24, eff. Sept. 1, 2001. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 886 (S.B. 313), Sec. 2, eff. June 17, 2011.

Sec. 35.009. NOTICE AND HEARING. (a) The commission shall

have notice of the hearing published in at least one newspaper with general circulation in the county or counties in which the area proposed for designation as a priority groundwater management area is located. Notice must be published not later than the 30th day before the date set for the hearing.

(b) The notice must include:

(1) if applicable, a statement of the general purpose and effect of designating the proposed priority groundwater management area;

(2) if applicable, a statement of the general purpose and effect of creating a new district in the priority groundwater management area;

(3) if applicable, a statement of the general purpose and effect of adding all or part of the land in the priority groundwater management area to an existing district;

(4) a map generally outlining the boundaries of the area being considered for priority groundwater management area designation or notice of the location at which a copy of the map may be examined or obtained;

(5) a statement that the executive director's report concerning the priority groundwater management area or proposed area is available at the commission's main office in Austin, Texas, and at regional offices of the commission for regions which include territory within the priority groundwater management area or proposed priority groundwater management area and that the report is available for inspection during regular business hours;

(6) a description or the name of the locations in the affected area at which the commission has provided copies of the executive director's report to be made available for public inspection;

(7) the name and address of each public library, each county clerk's office, and each district to which the commission has provided copies of the executive director's report; and

(8) the date, time, and place of the hearing.

(c) The commission shall also give written notice of the date, time, place, and purpose of the hearing to the governing body of each county, regional water planning group, adjacent groundwater district, municipality, river authority, water district, or other entity which supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission,

and of each irrigation district, located either in whole or in part in the priority groundwater management area or proposed priority groundwater management area. The notice must be given before the 30th day preceding the date set for the hearing.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.13, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.25, eff. Sept. 1, 2001.

Sec. 35.012. CREATION OF DISTRICT IN PRIORITY GROUNDWATER MANAGEMENT AREA. (a) Following the issuance of a commission order under Section 35.008 designating a priority groundwater management area and recommending the creation of one or more districts, or the addition of land to an existing district, the landowners in the priority groundwater management area may:

(1) create one or more districts under Subchapter B, Chapter 36;

(2) have the area annexed to a district that adjoins the area; or

(3) create one or more districts through the legislative process.

(b) Except as provided by Section 35.013, within two years, but no sooner than 120 days, from the date on which the commission issues an order under Section 35.008 designating a priority groundwater management area, for those areas that are not within a district, the commission shall create one or more new districts under Section 36.0151.

(b-1) For purposes of this section, the commission may consider territory in two separately designated priority groundwater management areas to be in the same designated priority groundwater management area if:

(1) the two areas share a common boundary and one or more common aquifers; and

(2) the commission determines that a district composed of territory in the two areas will result in more effective or efficient groundwater management than other options available to the commission.

(c) Following the issuance of a commission order under Section 35.008, the Texas Agricultural Extension Service shall begin an

educational program within such areas with the assistance and cooperation of the Texas Water Development Board, the commission, the Department of Agriculture, other state agencies, and existing districts to inform the residents of the status of the area's water resources and management options including possible formation of a district. The county commissioners court of each county in the priority groundwater management area shall form a steering committee to provide assistance to the Texas Agricultural Extension Service in accomplishing the goals of the education program within the area.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.14, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 11, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 13, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.26, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 886 (S.B. 313), Sec. 3, eff. June 17, 2011.

Sec. 35.013. ADDING PRIORITY GROUNDWATER MANAGEMENT AREA TO EXISTING DISTRICT. (a) If the commission in its order under Section 35.008 recommends that the priority groundwater management area or a portion of the priority groundwater management area be added to an existing district, the commission shall give notice to the board of the existing district recommended in its order and to any other existing districts adjacent to the priority groundwater management area.

(b) The commission shall submit a copy of the order to the board of the district to which it is recommending the priority groundwater management area be added. Not later than the 120th day after the date of receiving the copy, the board shall vote on the addition of the priority groundwater management area to the district and shall advise the commission of the outcome.

(b-1) If the district described by Subsection (b) has not approved an ad valorem tax on the date of the commission's order issued under Section 35.008 and the board of the district votes to accept the addition of the priority groundwater management area to the district, the board shall enter an order adding the territory in the district.

(c) If the district described by Subsection (b) has approved an ad valorem tax on the date of the commission's order issued under Section 35.008 and the board votes to accept the addition of the priority groundwater management area to the district, the board:

(1) shall enter an order adding the territory in the district;

(2) may request the Texas AgriLife Extension Service, the commission, and the Texas Water Development Board, with the cooperation and assistance of the Department of Agriculture and other state agencies, to administer an educational program to inform the residents of the status of the area's water resources, the addition of territory to the district, and options for financing management of the groundwater resources of the district;

(3) shall call an election to be held not later than the 270th day after the date of the board's vote under Subsection (b) within the priority groundwater management area, or portion of the priority groundwater management area, as delineated by the commission to determine if the added area will assume a proportional share of the debts or taxes of the district; and

(4) shall designate election precincts and polling places for the elections in the order calling an election under this subsection.

(d) The board shall give notice of the election and the proposition to be voted on. The board shall publish notice of the election at least one time in one or more newspapers with general circulation within the boundaries of the priority groundwater management area. The notice must be published before the 30th day preceding the date set for the election.

(e) The ballots for the election shall be printed to provide for voting for or against the proposition: "The assumption by the _____ (briefly describe the territory added under Subsection (c)(1)) of a proportional share of the debts or taxes of the _____ District instead of the assessment of fees in the described area to fund the groundwater management activities of the district."

(f) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the board, and the board shall canvass the returns for the election within the priority groundwater management area and declare the results. If a majority of the voters in the priority groundwater management area voting on the proposition vote in favor of the proposition, the board

shall declare that the priority groundwater management area assumes a proportional share of the debts or taxes of the district. If a majority of the voters in the priority groundwater management area voting on the proposition do not vote in favor of the proposition, the board shall adopt rules to implement Subsection (g-1). The board shall file a copy of the election results with the commission.

(g) The board of the district to which the priority groundwater management area is added shall provide reasonable representation on that board compatible with the district's existing scheme of representation. Not later than the 30th day after the date on which the board declares that the priority groundwater management area is added to the district, the board of the existing district shall appoint a person or persons to represent the area until the next regularly scheduled election or appointment of directors.

(g-1) If the voters do not approve the assumption of a proportional share of the debts or taxes of a district under Subsection (e), the board shall assess production fees in the added territory based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn. A district may use revenue generated for any purpose authorized by Section 36.206 or 36.207. Initial production fees may not exceed production fees as set in Section 36.205(c), but may be increased by the board on a majority vote after the first anniversary of the commission order. Production fees may be raised incrementally by 40 percent and 10 percent every following year until the maximum production fees equal:

(1) $2 per acre-foot, payable annually, for water used for an agricultural purpose; or

(2) 30 cents per 1,000 gallons, payable annually, for water used for any non-agricultural purpose.

(h) Not later than the first anniversary of the date on which the proposition is defeated, or the board of the existing district votes not to accept the addition of the area to the district, the commission shall, except as provided under Subsection (i):

(1) create under Section 36.0151 one or more districts covering the priority groundwater management area; or

(2) recommend the area be added to another existing district as provided by this section.

(i) For an area that is not feasible for the creation of one or more districts as determined in the commission's findings under

Section 35.008, the commission shall include in its report under Section 35.018 recommendations for the future management of the priority groundwater management area.

(j) Another election to add the priority groundwater management area to an existing district may not be called before the first anniversary of the date on which the election on the proposition was held.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 12, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 14, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.27, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 886 (S.B. 313), Sec. 4, eff. June 17, 2011.

Sec. 35.014. COSTS OF ELECTIONS. (a) The costs of an election to create a district at which a district is authorized to be created shall be paid by the district.

(b) The costs of an election to add a priority groundwater management area to an existing district at which the voters approve adding the priority groundwater management area to the district shall be paid by the existing district.

(c) The costs of an election to create a district or add a priority groundwater management area to an existing district at which the proposition fails shall be paid by the commission.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.16, eff. Sept. 1, 1997.

Sec. 35.015. STATE ASSISTANCE. A political subdivision located in an area delineated as a priority groundwater management area, and in which qualified voters approve the creation of a district or annexation into an existing district, shall be given consideration to receive financial assistance from the state under Chapter 17 for funds to be used in addressing issues identified in the priority groundwater management area report in the manner provided by Sections

17.124 and 17.125.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.17, eff. Sept. 1, 1997.

Sec. 35.017. STATE-OWNED LAND. If state-owned land or a portion of state-owned land is located in a priority groundwater management area, the state agency that has management and control over that land under the constitution or by statute may elect by written agreement with the commission and the district to include the state-owned land in the district. The agreement shall be entered into as provided by the Texas Intergovernmental Cooperation Act, Chapter 741, Government Code, and may include provisions for the payment by the state agency of reasonable fees to the district. If the state does not elect to enter into the agreement to include the state-owned land in the district, the state agency must establish a groundwater management plan that will conserve, protect, and prevent the waste of groundwater on that state-owned land.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.18, eff. Sept. 1, 1997.

Sec. 35.018. REPORTS. (a) No later than January 31 of each odd-numbered year, the commission in conjunction with the Texas Water Development Board shall prepare and deliver to the governor, the lieutenant governor, and the speaker of the house of representatives a comprehensive report concerning activities during the preceding two years relating to the designation of priority groundwater management areas by the commission and the creation and operation of districts.

(b) The report must include:

(1) the names and locations of all priority groundwater management areas and districts created or attempted to be created on or after November 5, 1985, the effective date of Chapter 133 (H.B. No. 2), Acts of the 69th Legislature, Regular Session, 1985;

(2) the authority under which each priority groundwater management area and district was proposed for creation;

(3) a detailed analysis of each election held to confirm

the creation of a district, including analysis of election results, possible reasons for the success or failure to confirm the creation of a district, and the possibility for future voter approval of districts in areas in which attempts to create districts failed;

(4) a detailed analysis of the activities of each district created, including those districts which are implementing management plans certified under Section 36.1072;

(5) a report on audits performed on districts under Section 36.302 and remedial actions taken under Section 36.303;

(6) recommendations for changes in this chapter and Chapter 36 that will facilitate the creation of priority groundwater management areas and the creation and operation of districts;

(7) a report on educational efforts in newly designated priority groundwater management areas; and

(8) any other information and recommendations that the commission considers relevant.

(c) If the commission determines that a district created under Chapter 36 is not appropriate for, or capable of, the protection of the groundwater resources for a particular management area or priority groundwater management area, the commission may recommend in its report to the legislature the creation of a special district or amendment of an existing district.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.19, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.28, eff. Sept. 1, 2001.

Sec. 35.019. WATER AVAILABILITY. (a) The commissioners court of a county in a priority groundwater management area may adopt water availability requirements in an area where platting is required if the court determines that the requirements are necessary to prevent current or projected water use in the county from exceeding the safe sustainable yield of the county's water supply.

(b) The commissioners court of a county in a priority groundwater management area may:

(1) require a person seeking approval of a plat required by Subchapter A, Chapter 232, Local Government Code, to show:

(A) compliance with the water availability requirements adopted by the court under this section; and

(B) that an adequate supply of water of sufficient quantity and quality is available to supply the number of lots proposed for the platted area;

(2) adopt standards or formulas to determine whether an adequate water supply exists for the platted area; and

(3) adopt procedures for submitting the information necessary to determine whether an adequate water supply exists for the platted area.

(c) The water availability requirements established by a commissioners court under this section may require that:

(1) a person seeking approval of a plat or attempting to sell a lot in a subdivision:

(A) notify a purchaser of a lot in the subdivision if an approved water supply for the subdivision does not exist; or

(B) if the person attempts to build a water supply system to serve one or more lots within the subdivision:

(i) comply with federal, state, and local law; and

(ii) establish an entity to construct and operate the system; or

(2) a planned or operating water supply system serving one or more lots within a subdivision be built and operated in compliance with federal, state, and local laws and rules related to public drinking water.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.19, eff. Sept. 1, 1997.

Sec. 35.020. PUBLIC PARTICIPATION IN GROUNDWATER MANAGEMENT PROCESS. It is the policy of the state to encourage public participation in the groundwater management process in areas within a groundwater management area not represented by a groundwater conservation district.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.20, eff. September 1, 2007.

CHAPTER 36. GROUNDWATER CONSERVATION DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 36.001. DEFINITIONS. In this chapter:

(1) "District" means any district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive director" means the executive director of the commission.

(4) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(4-a) "Federal conservation program" means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.

(5) "Groundwater" means water percolating below the surface of the earth.

(6) "Groundwater reservoir" means a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.

(7) "Subdivision of a groundwater reservoir" means a definable part of a groundwater reservoir in which the groundwater supply will not be appreciably affected by withdrawing water from any other part of the reservoir, as indicated by known geological and hydrological conditions and relationships and on foreseeable economic development at the time the subdivision is designated or altered.

(8) "Waste" means any one or more of the following:

(A) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;

(C) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

(D) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

(E) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural

watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26;

(F) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or

(G) for water produced from an artesian well, "waste" also has the meaning assigned by Section 11.205.

(9) "Use for a beneficial purpose" means use for:

(A) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;

(B) exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or

(C) any other purpose that is useful and beneficial to the user.

(10) "Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.

(11) "Board" means the board of directors of a district.

(12) "Director" means a member of a board.

(13) "Management area" means an area designated and delineated by the Texas Water Development Board under Chapter 35 as an area suitable for management of groundwater resources.

(14) "Priority groundwater management area" means an area designated and delineated by the commission under Chapter 35 as an area experiencing or expected to experience critical groundwater problems.

(15) "Political subdivision" means a county, municipality, or other body politic or corporate of the state, including a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a state agency, or a nonprofit water supply corporation created under Chapter 67.

(16) "Loan fund" means the groundwater conservation district loan assistance fund created under Section 36.371.

(17) Repealed by Acts 2005, 79th Leg., Ch. 970, Sec. 18, eff. September 1, 2005.

(18) "Public water supply well" means, for purposes of a district governed by this chapter, a well that produces the majority

of its water for use by a public water system.

(19) "Agriculture" means any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;

(E) wildlife management; and

(F) raising or keeping equine animals.

(20) "Agricultural use" means any use or activity involving agriculture, including irrigation.

(21) "Conjunctive use" means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.

(22) "Nursery grower" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(23) "River basin" means a river or coastal basin designated as a river basin by the board under Section 16.051. The term does not include waters of the bays or arms originating in the Gulf of Mexico.

(24) "Total aquifer storage" means the total calculated volume of groundwater that an aquifer is capable of producing.

(25) "Modeled available groundwater" means the amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition established under Section 36.108.

(26) "Recharge" means the amount of water that infiltrates

to the water table of an aquifer.

(27) "Inflows" means the amount of water that flows into an aquifer from another formation.

(28) "Discharge" means the amount of water that leaves an aquifer by natural or artificial means.

(29) "Evidence of historic or existing use" means evidence that is material and relevant to a determination of the amount of groundwater beneficially used without waste by a permit applicant during the relevant time period set by district rule that regulates groundwater based on historic use. Evidence in the form of oral or written testimony shall be subject to cross-examination. The Texas Rules of Evidence govern the admissibility and introduction of evidence of historic or existing use, except that evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(30) "Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.

(31) "Operating permit" means any permit issued by the district for the operation of or production from a well, including a permit to drill or complete a well if the district does not require a separate permit for the drilling or completion of a well.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.20, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.65, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.29, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1234, Sec. 34, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1275, Sec. 2(147), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 18, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1116 (H.B. 2423), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 18 (S.B. 737), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 14, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 308 (S.B. 854), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 1, eff. June 10, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 19.003, eff. September 1, 2017.

Sec. 36.0015. PURPOSE. (a) In this section, "best available science" means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.

(b) In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management in order to protect property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.21, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.30, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 993 (H.B. 200), Sec. 1, eff. September 1, 2015.

Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) The legislature recognizes that a landowner owns the groundwater below the surface of

the landowner's land as real property.

(b) The groundwater ownership and rights described by this section entitle the landowner, including a landowner's lessees, heirs, or assigns, to:

(1) drill for and produce the groundwater below the surface of real property, subject to Subsection (d), without causing waste or malicious drainage of other property or negligently causing subsidence; and

(2) have any other right recognized under common law.

(b-1) The groundwater ownership and rights described by this section do not:

(1) entitle a landowner, including a landowner's lessees, heirs, or assigns, to the right to capture a specific amount of groundwater below the surface of that landowner's land; or

(2) affect the existence of common law defenses or other defenses to liability under the rule of capture.

(c) Nothing in this code shall be construed as granting the authority to deprive or divest a landowner, including a landowner's lessees, heirs, or assigns, of the groundwater ownership and rights described by this section.

(d) This section does not:

(1) prohibit a district from limiting or prohibiting the drilling of a well by a landowner for failure or inability to comply with minimum well spacing or tract size requirements adopted by the district;

(2) affect the ability of a district to regulate groundwater production as authorized under Section 36.113, 36.116, or 36.122 or otherwise under this chapter or a special law governing a district; or

(3) require that a rule adopted by a district allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner.

(e) This section does not affect the ability to regulate groundwater in any manner authorized under:

(1) Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, for the Edwards Aquifer Authority;

(2) Chapter 8801, Special District Local Laws Code, for the Harris-Galveston Subsidence District; and

(3) Chapter 8834, Special District Local Laws Code, for the

Fort Bend Subsidence District.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.31, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1116 (H.B. 2423), Sec. 2, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1207 (S.B. 332), Sec. 1, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 590 (H.B. 4112), Sec. 1, eff. June 16, 2015.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 36.011. METHOD OF CREATING DISTRICT. (a) A groundwater conservation district may be created under and subject to the authority, conditions, and restrictions of Section 59, Article XVI, Texas Constitution.

(b) The commission has exclusive jurisdiction over the creation of districts.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.32, eff. Sept. 1, 2001.

Sec. 36.012. COMPOSITION OF DISTRICT. (a) A district may include all or part of one or more counties, cities, districts, or other political subdivisions.

(b) A district may not include territory located in more than one county except on a majority vote of the voters residing within the territory in each county sought to be included in the district at an election called for that purpose.

(c) The boundaries of a district must be coterminous with or inside the boundaries of a management area or a priority groundwater management area.

(d) A district may consist of separate bodies of land separated by land not included in the district.

(e) A majority of the voters in a segregated area must approve the creation of the district before that area may be included in the

district.

(f) This section does not apply to districts created under Section 36.0151.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.22, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.33, eff. Sept. 1, 2001.

Sec. 36.013. PETITION TO CREATE DISTRICT. (a) A petition requesting creation of a district must be filed with the commission for review and certification under Section 36.015.

(b) The petition filed pursuant to this section must be signed by:

(1) a majority of the landowners within the proposed district, as indicated by the county tax rolls; or

(2) if there are more than 50 landowners in the proposed district, at least 50 of those landowners.

(c) The petition must include:

(1) the name of the proposed district;

(2) the area and boundaries of the proposed district, including a map generally outlining the boundaries of the proposed district;

(3) the purpose or purposes of the district;

(4) a statement of the general nature of any projects proposed to be undertaken by the district, the necessity and feasibility of the work, and the estimated costs of those projects according to the persons filing the projects if the projects are to be funded by the sale of bonds or notes;

(5) the names of at least five individuals qualified to serve as temporary directors; and

(6) financial information, including the projected maintenance tax or production fee rate and a proposed budget of revenues and expenses for the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.23, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.34, eff. Sept. 1, 2001.

Sec. 36.014. NOTICE AND PUBLIC MEETING ON DISTRICT CREATION.

(a) If a petition is filed under Section 36.013, the commission shall give notice of the application and shall conduct a public meeting in a central location within the area of the proposed district on the application not later than the 60th day after the date the commission issues notice. The notice must contain the date, time, and location of the public meeting and must be published in one or more newspapers of general circulation in the area of the proposed district.

(b) If the petition contains a request to create a management area in all or part of the proposed district, the notice must also be given in accordance with the requirements in Section 35.006 for the designation of management areas.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.35, eff. Sept. 1, 2001.

Sec. 36.015. COMMISSION CERTIFICATION AND ORDER. (a) Not later than the 90th day after the date the commission holds a public meeting on a petition under Section 36.014, the commission shall certify the petition if the petition is administratively complete. A petition is administratively complete if it complies with the requirements of Sections 36.013(b) and (c).

(b) The commission may not certify a petition if the commission finds that the proposed district cannot be adequately funded to carry out its purposes based on the financial information provided in the petition under Section 36.013(c)(6) or that the boundaries of the proposed district do not provide for the effective management of the groundwater resources. The commission shall give preference to boundary lines that are coterminous with those of a groundwater management area but may also consider boundaries along existing political subdivision boundaries if such boundaries would facilitate district creation and confirmation.

(c) If a petition proposes the creation of a district in an area, in whole or in part, that has not been designated as a management area, the commission shall provide notice to the Texas Water Development Board. On the receipt of notice from the commission, the Texas Water Development Board shall initiate the process of designating a management area for the area of the proposed

district not included in a management area. The commission may not certify the petition until the Texas Water Development Board has adopted a rule whereby the boundaries of the proposed district are coterminous with or inside the boundaries of a management area.

(d) If the commission does not certify the petition, the commission shall provide to the petitioners, in writing, the reasons for not certifying the petition. The petitioners may resubmit the petition, without paying an additional fee, if the petition is resubmitted within 90 days after the date the commission sends the notice required by this subsection.

(e) If the commission certifies the petition as administratively complete, the commission shall issue an order, notify the petitioners, and appoint temporary directors as provided by Section 36.016.

(f) Refusal by the commission to certify a petition to create a district does not invalidate or affect the designation of any management area.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.36, eff. Sept. 1, 2001.

Sec. 36.0151. CREATION OF DISTRICT FOR PRIORITY GROUNDWATER MANAGEMENT AREA. (a) If the commission is required to create a district under Section 35.012(b), it shall, without an evidentiary hearing, issue an order creating the district and shall provide in its order that temporary directors be appointed under Section 36.0161 and that an election be called by the temporary directors to authorize the district to assess taxes and to elect permanent directors.

(b) The commission shall notify the county commissioners court of each county with territory in the district of the district's creation as soon as practicable after issuing the order creating the district.

(c) The commission may amend the territory in an order issued under Section 35.008 or this section to adjust for areas that, in the time between when the order was issued under Section 35.008 and the order is issued under this section, have:

(1) been added to an existing district or created as a

separate district; or

(2) not been added to an existing district or created as a separate district.

(d) In making a modification under Subsection (c), the commission may recommend:

(1) creation of a new district in the area; or

(2) that the area be added to a different district.

(e) Except as provided by Section 35.013(h), a change in the order under Subsection (c) does not affect a deadline under Section 35.012 or 35.013.

(f) Before September 1, 2021, the commission may not create a groundwater conservation district under this section in a county:

(1) in which the annual amount of surface water used is more than 50 times the annual amount of groundwater produced;

(2) that is located in a priority groundwater management area; and

(3) that has a population greater than 2.3 million.

(g) To the extent of a conflict between Subsection (f) and Section 35.012, Subsection (f) prevails.

(h) The commission may charge an annual fee not to exceed $500 to a county described by Subsection (f) for the purpose of studying compliance with that subsection in that county and the overall groundwater consumption in that county.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.24, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.37, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 886 (S.B. 313), Sec. 5, eff. June 17, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 77.01, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1196 (S.B. 1336), Sec. 12, eff. September 1, 2015.

Sec. 36.016. APPOINTMENT OF TEMPORARY DIRECTORS. (a) If the commission certifies a petition to create a district under Section 36.015, the commission shall appoint the temporary directors named in the petition. If the commission dissolves a district's board under

Section 36.303, it shall appoint five temporary directors.

(b) If the commission creates a district under Section 36.0151, the county commissioners court or courts of the county or counties that contain the area of the district shall, within 90 days after receiving notification by the commission under Section 36.0151(b), appoint five temporary directors, or more if the district contains the territory of more than five counties, for the district's board using the method provided by Section 36.0161. A county commissioners court shall not make any appointments after the expiration of the 90-day period. If fewer than five temporary directors have been appointed at the expiration of the period, the commission shall appoint additional directors so that the board has at least five members.

(c) Temporary directors appointed under this section shall serve until the initial directors are elected and have qualified for office or until the voters fail to approve the creation of the district.

(d) If an appointee of the commission or of a county commissioners court fails to qualify or if a vacancy occurs in the office of temporary director, the commission or the county commissioners court, as appropriate, shall appoint an individual to fill the vacancy.

(e) As soon as all temporary directors have qualified, the directors shall meet, take the oath of office, and elect a chairman and vice chairman from among their membership. The chairman shall preside at all meetings of the board and, in the chairman's absence, the vice chairman shall preside.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.25, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.38, eff. Sept. 1, 2001.

Sec. 36.0161. METHOD FOR APPOINTING TEMPORARY DIRECTORS FOR DISTRICT IN PRIORITY GROUNDWATER MANAGEMENT AREA. (a) If a district in a priority groundwater management area is:

(1) contained within one county, the county commissioners court of that county shall appoint five temporary directors for the district;

(2) contained within two counties, the county commissioners

court of each county shall appoint at least one temporary director, with the appointments of the three remaining directors to be apportioned as provided by Subsection (b);

(3) contained within three counties, the county commissioners court of each county shall appoint at least one temporary director, with the appointments of the two remaining directors to be apportioned as provided by Subsection (b);

(4) contained within four counties, the county commissioners court of each county shall appoint at least one temporary director, with the appointment of the remaining director to be apportioned as provided by Subsection (b); or

(5) contained within five or more counties, the county commissioners court of each county shall appoint one temporary director.

(b)(1) In this subsection, "estimated groundwater use" means the estimate of groundwater use in acre-feet developed by the commission under Subsection (c) for the area of a county that is within the district.

(2) The apportionment of appointments under Subsection (a) shall be made by the commission so as to reflect, as closely as possible, the proportion each county's estimated groundwater use bears to the sum of the estimated groundwater use for the district as determined under Subsection (c). The commission shall by rule determine the method it will use to implement this subdivision.

(c) If a district for which temporary directors are to be appointed is contained within two, three, or four counties, the commission shall develop an estimate of annual groundwater use in acre-feet for each county area within the district.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.26, eff. Sept. 1, 1997.

Sec. 36.017. CONFIRMATION AND DIRECTORS' ELECTION FOR DISTRICT IN A MANAGEMENT AREA. (a) For a district created under Section 36.015, not later than the 120th day after the date all temporary directors have been appointed and have qualified, the temporary directors shall meet and order an election to be held within the boundaries of the proposed district to approve the creation of the district and to elect permanent directors.

(b) In the order calling the election, the temporary directors shall designate election precincts and polling places for the election. In designating the polling places, the temporary directors shall consider the needs of all voters for conveniently located polling places.

(c) The temporary directors shall publish notice of the election at least one time in at least one newspaper with general circulation within the boundaries of the proposed district. The notice must be published before the 30th day preceding the date of the election.

(d) The ballot for the election must be printed to provide for voting for or against the proposition: "The creation of the _____ Groundwater Conservation District." If the district levies a maintenance tax for payment of its expenses, then an additional proposition shall be included with the following language: "The levy of a maintenance tax at a rate not to exceed _____ cents for each $100 of assessed valuation." The same ballot or another ballot must provide for the election of permanent directors, in accordance with Section 36.059.

(e) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the temporary board, and the board shall canvass the returns and declare the result. The board shall file a copy of the election result with the commission.

(f) If a majority of the votes cast at the election favor the creation of the district, the temporary board shall declare the district created and shall enter the result in its minutes.

(g) If a majority of the votes cast at the election are against the creation of the district, the temporary board shall declare the district defeated and shall enter the result in its minutes. The temporary board shall continue operations in accordance with Subsection (h).

(h) If the majority of the votes cast at the election are against the creation of the district, the district shall have no further authority, except that any debts incurred shall be paid and the organization of the district shall be maintained until all the debts are paid.

(i) If a majority of the votes cast at the election are against the levy of a maintenance tax, the district shall set fees authorized by this chapter to pay for the district's regulation of groundwater

in the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.39, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 2, eff. June 10, 2015.

Sec. 36.0171. TAX AUTHORITY AND DIRECTORS' ELECTION FOR DISTRICT IN A PRIORITY GROUNDWATER MANAGEMENT AREA. (a) For a district created under Section 36.0151, not later than the 120th day after the date all temporary directors have been appointed and have qualified, the temporary directors shall meet and order an election to be held within the boundaries of the proposed district to authorize the district to assess taxes and to elect permanent directors.

(b) In the order calling the election, the temporary directors shall designate election precincts and polling places for the election. In designating the polling places, the temporary directors shall consider the needs of all voters for conveniently located polling places.

(c) The temporary directors shall publish notice of the election at least once in at least one newspaper with general circulation within the boundaries of the proposed district. The notice must be published before the 30th day preceding the date of the election.

(d) The ballot for the election must be printed to provide for voting for or against the proposition: "The levy of a maintenance tax by the _____ Groundwater Conservation District at a rate not to exceed _____ cents for each $100 of assessed valuation." The same ballot or another ballot must provide for the election of permanent directors, in accordance with Section 36.059.

(e) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the temporary board, and the board shall canvass the returns, declare the result, and turn over the operations of the district to the elected permanent directors. The board shall file a copy of the election result with the commission.

(f) If a majority of the votes cast at the election favor the levy of a maintenance tax, the temporary board shall declare the levy approved and shall enter the result in its minutes.

(g) If a majority of the votes cast at the election are against the levy of a maintenance tax, the temporary board shall declare the levy defeated and shall enter the result in its minutes.

(h) If the majority of the votes cast at the election are against the levy of a maintenance tax, the district shall set fees authorized by this chapter in accordance with Section 35.013(g-1) to pay for the district's regulation of groundwater in the district.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 2.40, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 886 (S.B. 313), Sec. 6, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 3, eff. June 10, 2015.

Sec. 36.018. INCLUSION OF MUNICIPALITY. (a) If part of the territory to be included in a district is located in a municipality, a separate voting district may not be established in the municipality for the purpose of determining whether the municipality as a separate area is to be included in the district.

(b) If for any other reason the territory in a municipality is established as a separate voting district, the failure by the voters in the municipal territory to confirm the creation of the district or the annexation of territory to a district does not prevent the territory in the municipality from being included in the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1995.

Sec. 36.019. CONFIRMATION ELECTION IN DISTRICT INCLUDING LAND IN MORE THAN ONE COUNTY. (a) A district, the major portion of which is located in one county, may not be organized to include land in another county unless the election held in the other county to confirm and ratify the creation of the district is approved by a majority of the voters of the other county voting in an election called for that purpose.

(b) This section does not apply to districts created under Section 36.0151.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.41, eff. Sept. 1, 2001.

Sec. 36.020. BOND AND TAX PROPOSAL. (a) At an election to create a district, the temporary directors may include a proposition for the issuance of bonds or notes, the levy of taxes to retire all or part of the bonds or notes, and the levy of a maintenance tax. The maintenance tax rate may not exceed 50 cents on each $100 of assessed valuation.

(b) The board shall include in any bond and tax proposition the maximum amount of bonds or notes to be issued and their maximum maturity date.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.021. NOTIFICATION OF COUNTY CLERK. Within 30 days following the creation of a district or any amendment to the boundaries of a district, the board of directors shall file with the county clerk of each county in which all or part of the district is located a certified copy of the description of the boundaries of the district. Each county clerk shall record the certified copy of the boundaries in the property records of that county.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER C. ADMINISTRATION

Sec. 36.051. BOARD OF DIRECTORS. (a) The governing body of a district is the board of directors, which shall consist of not fewer than five and not more than 11 directors elected for four-year terms. The number of directors may be changed as determined by the board when territory is annexed by the district.

(b) A member of a governing body of another political subdivision is ineligible for appointment or election as a director. A director is disqualified and vacates the office of director if the

director is appointed or elected as a member of the governing body of another political subdivision. This subsection does not apply to any district with a population less than 50,000.

(c) Vacancies in the office of director shall be filled by appointment of the board. If the vacant office is not scheduled for election for longer than two years at the time of the appointment, the board shall order an election for the unexpired term to be held as part of the next regularly scheduled director's election. The appointed director's term shall end on qualification of the director elected at that election.

(d) In a district with a population of less than 50,000, the common law doctrine of incompatibility does not disqualify:

(1) a member of the governing body or officer of another political subdivision other than a municipality or county from serving as a director of the district; or

(2) a director of the district from serving as a member of the governing body or officer of another political subdivision other than a municipality or county.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 78, Sec. 1, eff. May 19, 2003.

Sec. 36.052. OTHER LAWS NOT APPLICABLE. (a) Other laws governing the administration or operations of districts created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, shall not apply to any district governed by this chapter. This chapter prevails over any other law in conflict or inconsistent with this chapter, except any special law governing a specific district shall prevail over this chapter.

(b) Notwithstanding Subsection (a), the following provisions prevail over a conflicting or inconsistent provision of a special law that governs a specific district:

(1) Sections 36.107-36.108;

(2) Sections 36.159-36.161; and

(3) Subchapter I.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.27, eff. Sept. 1, 1997.

Sec. 36.053. QUORUM. A majority of the membership of the board constitutes a quorum for any meeting, and a concurrence of a majority of the entire membership of the board is sufficient for transacting any business of the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.054. OFFICERS. (a) After a district is created and the directors have qualified, the board shall meet, elect a president, vice president, secretary, and any other officers or assistant officers as the board may deem necessary and begin the discharge of its duties.

(b) After each directors' election, the board shall meet and elect officers.

(c) The president is the chief executive officer of the district, presides at all meetings of the board, and shall execute all documents on behalf of the district. The vice president shall act as president in case of the absence or disability of the president. The secretary is responsible for seeing that all records and books of the district are properly kept and shall attest the president's signature on all documents.

(d) The board may appoint another director, the general manager, or any employee as assistant or deputy secretary to assist the secretary, and any such person shall be entitled to certify as to the authenticity of any record of the district, including but not limited to all proceedings relating to bonds, contracts, or indebtedness of the district.

(e) After any election or appointment of a director, a district shall notify the executive director within 30 days after the date of the election or appointment of the name and mailing address of the director chosen and the date that director's term of office expires. The executive director shall provide forms to the district for such purpose.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.055. SWORN STATEMENT, BOND, AND OATH OF OFFICE. (a) As soon as practicable after a director is elected or appointed, that director shall make the sworn statement prescribed by the

constitution for public office.

(b) As soon as practicable after a director has made the sworn statement, and before beginning to perform the duties of office, that director shall take the oath of office prescribed by the constitution for public officers.

(c) Before beginning to perform the duties of office, each director shall execute a bond for $10,000 payable to the district and conditioned on the faithful performance of that director's duties. All bonds of the directors shall be approved by the board and paid for by the district.

(d) The sworn statement shall be filed as prescribed by the constitution. The bond and oath shall be filed with the district and retained in its records. A duplicate original of the oath shall also be filed with the secretary of state within 10 days after its execution and need not be filed before the new director begins to perform the duties of office.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 249, Sec. 1, eff. Aug. 30, 1999.

Sec. 36.056. GENERAL MANAGER. (a) The board may employ or contract with a person to perform such services as general manager for the district as the board may from time to time specify. The board may delegate to the general manager full authority to manage and operate the affairs of the district subject only to orders of the board.

(b) The board may delegate to the general manager the authority to employ all persons necessary for the proper handling of the business and operation of the district and to determine the compensation to be paid all employees other than the general manager.

(c) Except in a district that is composed of the territory of more than one county, a director may be employed as general manager of the district. The compensation of a general manager who also serves as a director shall be established by the other directors.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.057. MANAGEMENT OF DISTRICT. (a) The board shall be responsible for the management of all the affairs of the district.

The district shall employ or contract with all persons, firms, partnerships, corporations, or other entities, public or private, deemed necessary by the board for the conduct of the affairs of the district, including, but not limited to, engineers, attorneys, financial advisors, operators, bookkeepers, tax assessors and collectors, auditors, and administrative staff.

(b) The board shall set the compensation and terms for consultants.

(c) In selecting attorneys, engineers, auditors, financial advisors, or other professional consultants, the district shall follow the procedures provided in the Professional Services Procurement Act, Subchapter A, Chapter 2254, Government Code.

(d) The board shall require an officer, employee, or consultant who collects, pays, or handles any funds of the district to furnish good and sufficient bond, payable to the district, in an amount determined by the board to be sufficient to safeguard the district. The bond shall be conditioned on the faithful performance of that person's duties and on accounting for all funds and property of the district. Such bond shall be signed or endorsed by a surety company authorized to do business in the state.

(e) The board may pay the premium on surety bonds required of officials, employees, or consultants of the district out of any available funds of the district, including proceeds from the sale of bonds.

(f) The board may adopt bylaws to govern the affairs of the district to perform its purposes. The board may, by resolution, authorize its general manager or other employee to execute documents on behalf of the district.

(g) The board shall also have the right to purchase all materials, supplies, equipment, vehicles, and machinery needed by the district to perform its purposes.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.058. CONFLICTS OF INTEREST. A director of a district is subject to the provisions of Chapters 171 and 176, Local Government Code, relating to the regulation of conflicts of officers of local governments.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 4, eff. June 10, 2015.

Sec. 36.059. GENERAL ELECTIONS. (a) All elections shall be generally conducted in accordance with the Election Code except as otherwise provided for by this chapter. Write-in candidacies for any district office shall be governed by Subchapter C, Chapter 146, Election Code.

(b) The directors of the district shall be elected according to the precinct method as defined by Chapter 12, page 1105, Special Laws, Acts of the 46th Legislature, Regular Session, 1939. To be qualified to be elected as a director, a person must be a registered voter in the precinct that the person represents. If any part of a municipal corporation is a part of one precinct, then no part of the municipal corporation shall be included in another precinct, except that a municipal corporation having a population of more than 200,000 may be divided between two or more precincts. In a multicounty district, not more than two of the five precincts may include the same municipal corporation or part of the same municipal corporation.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.060. FEES OF OFFICE; REIMBURSEMENT. (a) A director is entitled to receive fees of office of not more than $250 a day for each day the director actually spends performing the duties of a director. The fees of office may not exceed $9,000 a year.

(b) Each director is also entitled to receive reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the district.

(c) In order to receive fees of office and to receive reimbursement for expenses, each director shall file with the district a verified statement showing the number of days actually spent in the service of the district and a general description of the duties performed for each day of service.

(d) Section 36.052(a) notwithstanding, Subsection (a) prevails over any other law in conflict with or inconsistent with that subsection, including a special law governing a specific district

unless the special law prohibits the directors of that district from receiving a fee of office. If the application of this section results in an increase in the fees of office for any district, that district's fees of office shall not increase unless the district's board by resolution authorizes payment of the higher fees.

(e) For liability purposes only, a director is considered a district employee under Chapter 101, Civil Practice and Remedies Code, even if the director does not receive fees of office voluntarily, by district policy, or through a statutory exception to this section.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 1354, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.42, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 905, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 931 (H.B. 1563), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 464 (H.B. 3163), Sec. 1, eff. June 15, 2015.

Sec. 36.061. POLICIES. (a) Subject to the law governing the district, the board shall adopt the following in writing:

(1) a code of ethics for district directors, officers, employees, and persons who are engaged in handling investments for the district;

(2) a policy relating to travel expenditures;

(3) a policy relating to district investments that ensures that:

(A) purchases and sales of investments are initiated by authorized individuals, conform to investment objectives and regulations, and are properly documented and approved; and

(B) periodic review is made of district investments to evaluate investment performance and security;

(4) policies and procedures for selection, monitoring, or review and evaluation of professional services; and

(5) policies that ensure a better use of management information, including:

(A) budgets for use in planning and controlling cost;

and

(B) an audit or finance committee of the board.

(b) The state auditor may audit the records of any district if the state auditor determines that the audit is necessary.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 785, Sec. 51, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 5, eff. June 10, 2015.

Sec. 36.062. OFFICES AND MEETING PLACES. (a) The board shall designate from time to time and maintain one or more regular offices for conducting the business of the district and maintaining the records of the district. Such offices may be located either inside or outside the district's boundaries as determined in the discretion of the board.

(b) The board shall designate one or more places inside or outside the district for conducting the meetings of the board.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.063. NOTICE OF MEETINGS. (a) Except as provided by Subsections (b) and (c), notice of meetings of the board shall be given as set forth in the Open Meetings Act, Chapter 551, Government Code. Neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting shall affect the validity of any action taken at the meeting.

(b) At least 10 days before a hearing under Section 36.108(d-2) or a meeting at which a district will adopt a desired future condition under Section 36.108(d-4), the board must post notice that includes:

(1) the proposed desired future conditions and a list of any other agenda items;

(2) the date, time, and location of the meeting or hearing;

(3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;

(4) the names of the other districts in the district's management area; and

(5) information on how the public may submit comments.

(c) Except as provided by Subsection (b), notice of a hearing described by Subsection (b) must be provided in the manner prescribed for a rulemaking hearing under Section 36.101(d).

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 15, eff. September 1, 2011.

Sec. 36.064. MEETINGS. (a) The board shall hold regular meetings at least quarterly. It may hold meetings at other times as required for the business of the district.

(b) Meetings shall be conducted and notice of meetings shall be posted in accordance with the Open Meetings Act, Chapter 551, Government Code. A meeting of a committee of the board, or a committee composed of representatives of more than one board, where less than a quorum of any one board is present is not subject to the provisions of the Open Meetings Act, Chapter 551, Government Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.065. RECORDS. (a) The board shall keep a complete account of all its meetings and proceedings and shall preserve its minutes, contracts, records, notices, accounts, receipts, and other records in a safe place.

(b) The records of each district are the property of the district and are subject to Chapter 552, Government Code.

(c) The preservation, storage, destruction, or other disposition of the records of each district is subject to the requirements of Chapter 201, Local Government Code, and rules adopted thereunder.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.066. SUITS. (a) A district may sue and be sued in the

courts of this state in the name of the district by and through its board. A district board member is immune from suit and immune from liability for official votes and official actions. To the extent an official vote or official action conforms to laws relating to conflicts of interest, abuse of office, or constitutional obligations, this subsection provides immunity for those actions. All courts shall take judicial notice of the creation of the district and of its boundaries.

(b) Any court in the state rendering judgment for debt against a district may order the board to levy, assess, and collect taxes or assessments to pay the judgment.

(c) The president or the general manager of any district shall be the agent of the district on whom process, notice, or demand required or permitted by law to be served upon a district may be served.

(d) Except as provided in Subsection (e), no suit may be instituted in any court of this state contesting:

(1) the validity of the creation and boundaries of a district;

(2) any bonds or other obligations issued by a district; or

(3) the validity or the authorization of a contract with the United States by a district.

(e) The matters listed in Subsection (d) may be judicially inquired into at any time and determined in any suit brought by the State of Texas through the attorney general. The action shall be brought on good cause shown, except where otherwise provided by other provisions of this code or by the Texas Constitution. It is specifically provided, however, that no such proceeding shall affect the validity of or security for any bonds or other obligations theretofore issued by a district if such bonds or other obligations have been approved by the attorney general.

(f) A district shall not be required to give bond for appeal, injunction, or costs in any suit to which it is a party and shall not be required to deposit more than the amount of any award in any eminent domain proceeding.

(g) If the district prevails in any suit other than a suit in which it voluntarily intervenes, the district may seek and the court shall grant, in the interests of justice and as provided by Subsection (h), in the same action, recovery for attorney's fees,

costs for expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

(h) If the district prevails on some, but not all, of the issues in the suit, the court shall award attorney's fees and costs only for those issues on which the district prevails. The district has the burden of segregating the attorney's fees and costs in order for the court to make an award.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.43, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 464 (H.B. 3163), Sec. 2, eff. June 15, 2015.

Acts 2015, 84th Leg., R.S., Ch. 993 (H.B. 200), Sec. 2, eff. September 1, 2015.

Sec. 36.067. CONTRACTS. (a) A district shall contract, and be contracted with, in the name of the district.

(b) A district may purchase property from any other governmental entity by negotiated contract without the necessity of securing appraisals or advertising for bids.

(c) A district may use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 436, Sec. 8, eff. May 28, 2001.

Sec. 36.068. EMPLOYEE BENEFITS. (a) The board may provide for and administer retirement, disability, and death compensation funds for the employees of the district.

(b) The board may establish a public retirement system in accordance with the provisions of Chapter 810, Government Code. The board may also provide for a deferred compensation plan described by Section 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 457).

(c) The board may include hospitalization and medical benefits to its employees as part of the compensation paid to the officers and

employees and may adopt any plan, rule, or regulation in connection with it and amend or change the plan, rule, or regulation as it may determine.

(d) The board may establish a sick leave pool for employees of the district in the same manner as that authorized for the creation of a sick leave pool for state employees by Subchapter A, Chapter 661, Government Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 36.101. RULEMAKING POWER. (a) A district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. In adopting a rule under this chapter, a district shall:

(1) consider all groundwater uses and needs;

(2) develop rules that are fair and impartial;

(3) consider the groundwater ownership and rights described by Section 36.002;

(4) consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution;

(5) consider the goals developed as part of the district's management plan under Section 36.1071; and

(6) not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program.

(a-1) Any rule of a district that discriminates between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation

program is void.

(b) Except as provided by Section 36.1011, after notice and hearing, the board shall adopt and enforce rules to implement this chapter, including rules governing procedure before the board.

(c) The board shall compile its rules and make them available for use and inspection at the district's principal office.

(d) Not later than the 20th day before the date of a rulemaking hearing, the general manager or board shall:

(1) post notice in a place readily accessible to the public at the district office;

(2) provide notice to the county clerk of each county in the district;

(3) publish notice in one or more newspapers of general circulation in the county or counties in which the district is located;

(4) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (i); and

(5) make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the district has a website, post an electronic copy on a generally accessible Internet site.

(e) The notice provided under Subsection (d) must include:

(1) the time, date, and location of the rulemaking hearing;

(2) a brief explanation of the subject of the rulemaking hearing; and

(3) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.

(f) The presiding officer shall conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.

(g) A district may require each person who participates in a rulemaking hearing to submit a hearing registration form stating:

(1) the person's name;

(2) the person's address; and

(3) whom the person represents, if the person is not at the hearing in the person's individual capacity.

(h) The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.

(i) A person may submit to the district a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the district. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.

(j) A district may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested persons, or public representatives to advise the district about contemplated rules.

(k) Failure to provide notice under Subsection (d)(4) does not invalidate an action taken by the district at a rulemaking hearing.

(l) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1135 (H.B. 2729), Sec. 15(2), eff. September 1, 2019.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.44, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1116 (H.B. 2423), Sec. 3, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1207 (S.B. 332), Sec. 2, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1135 (H.B. 2729), Sec. 15(2), eff. September 1, 2019.

Sec. 36.1011. EMERGENCY RULES. (a) A board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the board:

(1) finds that a substantial likelihood of imminent peril

to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and

(2) prepares a written statement of the reasons for its finding under Subdivision (1).

(b) Except as provided by Subsection (c), a rule adopted under this section may not be effective for longer than 90 days.

(c) If notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.

(d) A rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Government Code.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1135 (H.B. 2729), Sec. 15(3), eff. September 1, 2019.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 4, eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1135 (H.B. 2729), Sec. 15(3), eff. September 1, 2019.

Sec. 36.1015. RULES FOR PERMITS IN BRACKISH GROUNDWATER PRODUCTION ZONES. (a) In this section:

(1) "Designated brackish groundwater production zone" means an aquifer, subdivision of an aquifer, or geologic stratum designated under Section 16.060(b)(5).

(2) "Development board" means the Texas Water Development Board.

(3) "Gulf Coast Aquifer" means the system of hydrogeologic units that run along the Gulf Coast from the Sabine River to the Rio Grande, including:

(A) the Catahoula confining system, including the Frio Formation, the Anahuac Formation, and the Catahoula Tuff or Sandstone;

(B) the Jasper Aquifer, including the Oakville Sandstone and Fleming Formation;

(C) the Burkeville confining system separating the Jasper Aquifer from the Evangeline Aquifer;

(D) the Evangeline Aquifer, including the Goliad Sand;

and

(E) the Chicot Aquifer, including the Willis Sand, the Bentley Formation, the Montgomery Formation, the Beaumont Clay, and alluvial deposits at the surface.

(b) The requirements of this section do not apply to a district that:

(1) overlies the Dockum Aquifer; and

(2) includes wholly or partly 10 or more counties.

(c) A district located over any part of a designated brackish groundwater production zone may adopt rules to govern the issuance of permits under this section for the completion and operation of a well for the withdrawal of brackish groundwater from a designated brackish groundwater production zone and shall adopt rules described by this subsection if the district receives a petition from a person with a legally defined interest in groundwater in the district. The district must adopt the rules not later than the 180th day after the date the district receives the petition. Rules adopted under this subsection apply only to a permit for a project described by Subsection (d).

(d) A person may obtain a permit under rules adopted under this section for projects including:

(1) a municipal project designed to treat brackish groundwater to drinking water standards for the purpose of providing a public source of drinking water; and

(2) an electric generation project to treat brackish groundwater to water quality standards sufficient for the project needs.

(e) The rules adopted under this section must:

(1) provide for processing an application for a brackish groundwater production zone operating permit in the same manner as an application for an operating permit for a fresh groundwater well, except as provided by this section;

(2) allow withdrawals and rates of withdrawal of brackish groundwater from a designated brackish groundwater production zone not to exceed and consistent with the withdrawal amounts identified in Section 16.060(e);

(3) provide for a minimum term of 30 years for a permit issued for a well that produces brackish groundwater from a designated brackish groundwater production zone;

(4) require implementation of a monitoring system

recommended by the development board to monitor water levels and water quality in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum in which the designated brackish groundwater production zone is located;

(5) for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, require reasonable monitoring by the district of land elevations to determine if production from the project is causing or is likely to cause subsidence during the permit term;

(6) require from the holder of a permit issued under rules adopted under this section annual reports that must include:

(A) the amount of brackish groundwater withdrawn;

(B) the average monthly water quality of the brackish groundwater withdrawn and in the monitoring wells; and

(C) aquifer levels in both the designated brackish groundwater production zone and in any aquifer, subdivision of an aquifer, or geologic stratum for which the permit requires monitoring;

(7) provide greater access to brackish groundwater by simplifying procedure, avoiding delay in permitting, saving expense for the permit seeker, and providing flexibility to permit applicants and the district;

(8) be consistent with and not impair property rights described by Sections 36.002(a) and (b); and

(9) specify all additional information that must be included in an application.

(f) Additional information required under Subsection (e)(9) must be reasonably related to an issue the district is authorized to consider.

(g) An application for a brackish groundwater production zone operating permit must include:

(1) the proposed well field design compared to the designated brackish groundwater production zone;

(2) the requested maximum groundwater withdrawal rate for the proposed project;

(3) the number and location of monitoring wells needed to determine the effects of the proposed project on water levels and water quality in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum in which the designated brackish groundwater production zone is located; and

(4) a report that includes:

(A) a simulation of the projected effects of the proposed production on water levels and water quality in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum in which the designated brackish groundwater production zone is located;

(B) a description of the model used for the simulation described by Paragraph (A); and

(C) sufficient information for a technical reviewer to understand the parameters and assumptions used in the model described by Paragraph (B).

(h) The district shall submit the application to the development board and the development board shall conduct a technical review of the application. The development board shall submit a report of the review of the application that includes:

(1) findings regarding the compatibility of the proposed well field design with the designated brackish groundwater production zone; and

(2) recommendations for the monitoring system described by Subsection (e)(4).

(i) The district may not schedule a hearing on the application until the district receives the report from the development board described by Subsection (h).

(j) The district shall provide the reports required under Subsection (e)(6) to the development board. Not later than the 120th day after the date the development board receives a request from the district, the development board shall investigate and issue a report on whether brackish groundwater production under the project that is the subject of the report from the designated brackish groundwater production zone is projected to cause:

(1) significant aquifer level declines in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum that were not anticipated by the development board in the designation of the zone;

(2) negative effects on quality of water in an aquifer, subdivision of an aquifer, or geologic stratum; or

(3) for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, subsidence during the permit term.

(k) After receiving from the development board a report issued

under Subsection (j) and after notice and hearing subject to Subchapter M, the district may:

(1) amend the applicable permit to establish a production limit necessary to mitigate any negative effects identified by the report;

(2) approve a mitigation plan that alleviates any negative effects identified by the report; or

(3) both amend the permit to establish a production limit and approve a mitigation plan.

(l) Rules adopted under this section must provide that the production authorized from a designated brackish groundwater production zone is in addition to the amount of managed available groundwater provided under Section 36.108. To the extent possible, a district shall issue permits up to the point that the total volume of exempt and permitted groundwater production in a designated brackish groundwater production zone equals the amount of brackish groundwater that may be produced annually to achieve the groundwater availability described by the development board in its designation of the brackish groundwater production zone under Section 16.060(e).

(m) A district may not adopt rules limiting access to the production of groundwater within a designated brackish groundwater production zone to only those projects described by Subsection (d).

(n) The district may grant or deny an application to extend a term under this section only using rules that were in effect at the time the application was submitted.

(o) An application for a permit under this section is governed solely by district rules consistent with this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1044 (H.B. 722), Sec. 1, eff. September 1, 2019.

Sec. 36.102. ENFORCEMENT OF RULES. (a) A district may enforce this chapter and its rules against any person by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.

(b) The board by rule may set reasonable civil penalties against any person for breach of any rule of the district not to exceed $10,000 per day per violation, and each day of a continuing violation constitutes a separate violation.

(c) A penalty under this section is in addition to any other penalty provided by the law of this state and may be enforced against any person by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office or meeting place is located.

(d) If the district prevails in any suit to enforce its rules, the district may seek and the court shall grant against any person, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

(e) In an enforcement action by a district against any person that is a governmental entity for a violation of district rules, the limits on the amount of fees, costs, and penalties that a district may impose under Section 36.122, 36.205, or this section, or under a special law governing a district operating under this chapter, constitute a limit of liability of the governmental entity for the violation. This subsection shall not be construed to prohibit the recovery by a district of fees and costs under Subsection (d) in an action against any person that is a governmental entity.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 548, Sec. 2, eff. June 11, 2001; Acts 2001, 77th Leg., ch. 966, Sec. 2.45, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 425 (H.B. 2063), Sec. 1, eff. June 19, 2009.

Sec. 36.103. IMPROVEMENTS AND FACILITIES. (a) A district may build, acquire, or obtain by any lawful means any property necessary for the district to carry out its purpose and the provisions of this chapter.

(b) A district may:

(1) acquire land to erect dams or to drain lakes, draws, and depressions;

(2) construct dams;

(3) drain lakes, depressions, draws, and creeks;

(4) install pumps and other equipment necessary to recharge a groundwater reservoir or its subdivision; and

(5) provide necessary facilities for water conservation

purposes.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 560, Sec. 1, eff. Sept. 1, 2003.

Sec. 36.104. PURCHASE, SALE, TRANSPORTATION, AND DISTRIBUTION OF WATER. A district may purchase, sell, transport, and distribute surface water or groundwater.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 560, Sec. 2, eff. Sept. 1, 2003.

Sec. 36.105. EMINENT DOMAIN. (a) A district may exercise the power of eminent domain to acquire by condemnation a fee simple or other interest in property if that property interest is:

(1) within the boundaries of the district; and

(2) necessary for conservation purposes, including recharge and reuse.

(b) The power of eminent domain authorized in this section may not be used for the condemnation of land for the purpose of:

(1) acquiring rights to groundwater, surface water or water rights; or

(2) production, sale, or distribution of groundwater or surface water.

(c) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit a bond as provided by Section 21.021(a), Property Code.

(d) In a condemnation proceeding brought by a district, the district is not required to pay in advance or give bond or other security for costs in the trial court, to give bond for the issuance of a temporary restraining order or a temporary injunction, or to give bond for costs or supersedeas on an appeal or writ of error.

(e) In exercising the power of eminent domain, if the district requires relocating, raising, lowering, rerouting, changing the grade, or altering the construction of any railroad, highway, pipeline, or electric transmission or distribution, telegraph, or telephone lines, conduits, poles, or facilities, the district must bear the actual cost of relocating, raising, lowering, rerouting,

changing the grade, or altering the construction to provide comparable replacement without enhancement of facilities after deducting the net salvage value derived from the old facility.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 560, Sec. 3, eff. Sept. 1, 2003.

Sec. 36.106. SURVEYS. A district may make surveys of the groundwater reservoir or subdivision and surveys of the facilities in order to determine the quantity of water available for production and use and to determine the improvements, development, and recharging needed by a reservoir or its subdivision.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 560, Sec. 4, eff. Sept. 1, 2003.

Sec. 36.107. RESEARCH. A district may carry out any research projects deemed necessary by the board.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.28, eff. Sept. 1, 1997.

Sec. 36.1071. MANAGEMENT PLAN. (a) Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a management plan that addresses the following management goals, as applicable:

(1) providing the most efficient use of groundwater;

(2) controlling and preventing waste of groundwater;

(3) controlling and preventing subsidence;

(4) addressing conjunctive surface water management issues;

(5) addressing natural resource issues;

(6) addressing drought conditions;

(7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and

(8) addressing the desired future conditions adopted by the district under Section 36.108.

(b) The management plan, or any amendments to the plan, shall be developed using the district's best available data and forwarded to the regional water planning group for use in their planning process.

(c) The commission and the Texas Water Development Board shall provide technical assistance to a district in the development of the management plan required under Subsection (a) which may include, if requested by the district, a preliminary review and comment on the plan prior to final approval by the board. If such review and comment by the commission is requested, the commission shall provide comment not later than 30 days from the date the request is received.

(d) The commission shall provide technical assistance to a district during its initial operational phase. If requested by a district, the Texas Water Development Board shall train the district on basic data collection methodology and provide technical assistance to districts.

(e) In the management plan described under Subsection (a), the district shall:

(1) identify the performance standards and management objectives under which the district will operate to achieve the management goals identified under Subsection (a);

(2) specify, in as much detail as possible, the actions, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules;

(3) include estimates of the following:

(A) modeled available groundwater in the district based on the desired future condition established under Section 36.108;

(B) the amount of groundwater being used within the district on an annual basis;

(C) the annual amount of recharge from precipitation, if any, to the groundwater resources within the district;

(D) for each aquifer, the annual volume of water that discharges from the aquifer to springs and any surface water bodies, including lakes, streams, and rivers;

(E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, if a groundwater availability model is available;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) the projected total demand for water in the

district according to the most recently adopted state water plan; and

(4) consider the water supply needs and water management strategies included in the adopted state water plan.

(f) The district shall adopt rules necessary to implement the management plan. Prior to the development of the management plan and its approval under Section 36.1072, the district may not adopt rules other than rules pertaining to the registration and interim permitting of new and existing wells and rules governing spacing and procedure before the district's board; however, the district may not adopt any rules limiting the production of wells, except rules requiring that groundwater produced from a well be put to a nonwasteful, beneficial use. The district may accept applications for permits under Section 36.113, provided the district does not act on any such application until the district's management plan is approved as provided in Section 36.1072.

(g) The district shall adopt amendments to the management plan as necessary. Amendments to the management plan shall be adopted after notice and hearing and shall otherwise comply with the requirements of this section.

(h) In developing its management plan, the district shall use the groundwater availability modeling information provided by the executive administrator together with any available site-specific information that has been provided by the district to the executive administrator for review and comment before being used in the plan.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Redesignated from 36.107(b) and (c) and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.28, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.46, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 5, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 17 (S.B. 727), Sec. 1, eff. April 29, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 18 (S.B. 737), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 16, eff. September 1, 2011.

Sec. 36.1072. TEXAS WATER DEVELOPMENT BOARD REVIEW AND APPROVAL OF MANAGEMENT PLAN. (a) In this section, "development board" means the Texas Water Development Board.

(a-1) A district shall, not later than three years after the creation of the district or, if the district required confirmation, not later than three years after the election confirming the district's creation, submit the management plan required under Section 36.1071 to the executive administrator for review and approval.

(b) Within 60 days of receipt of a district's management plan adopted under Section 36.1071, readopted under Subsection (e) or (g) of this section, or amended under Section 36.1073, the executive administrator shall approve the district's plan if the plan is administratively complete. A management plan is administratively complete when it contains the information required to be submitted under Section 36.1071(a) and (e). The executive administrator may determine whether conditions justify waiver of the requirements under Section 36.1071(e)(4).

(c) Once the executive administrator has approved a district's management plan:

(1) the executive administrator may not revoke but may require revisions to the approved management plan as provided by Subsection (g); and

(2) the executive administrator may request additional information from the district if the information is necessary to clarify, modify, or supplement previously submitted material, but a request for additional information does not render the management plan unapproved.

(d) A management plan takes effect on approval by the executive administrator or, if appealed, on approval by the development board.

(e) The district may review the plan annually and must review and readopt the plan with or without revisions at least once every five years. The district shall provide the readopted plan to the executive administrator not later than the 60th day after the date on which the plan was readopted. Approval of the preceding management plan remains in effect until:

(1) the district fails to timely readopt a management plan;

(2) the district fails to timely submit the district's readopted management plan to the executive administrator; or

(3) the executive administrator determines that the

readopted management plan does not meet the requirements for approval, and the district has exhausted all appeals to the Texas Water Development Board or appropriate court.

(f) If the executive administrator does not approve the district's management plan, the executive administrator shall provide to the district, in writing, the reasons for the action. Not later than the 180th day after the date a district receives notice that its management plan has not been approved, the district may submit a revised management plan for review and approval. The executive administrator's decision may be appealed to the development board. If the development board decides not to approve the district's management plan on appeal, the district may request that the conflict be mediated. The district and the board may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the parties do not resolve the conflict through mediation, the decision of the development board not to approve the district's management plan may be appealed to a district court in Travis County. Costs for the appeal shall be set by the court hearing the appeal. An appeal under this subsection is by trial de novo. The commission shall not take enforcement action against a district under Subchapter I until the latest of the expiration of the 180-day period, the date the development board has taken final action withholding approval of a revised management plan, the date the mediation is completed, or the date a final judgment upholding the board's decision is entered by a district court. An enforcement action may not be taken against a district by the commission or the state auditor under Subchapter I because the district's management plan and the approved regional water plan are in conflict while the parties are attempting to resolve the conflict before the development board, in mediation, or in court. Rules of the district continue in full force and effect until all appeals under this subsection have been exhausted and the final judgment is adverse to the district.

(g) A person with a legally defined interest in groundwater in a district, or the regional water planning group, may file a petition

with the development board stating that a conflict requiring resolution may exist between the district's approved management plan developed under Section 36.1071 and the state water plan. If a conflict exists, the development board shall provide technical assistance to and facilitate coordination between the involved person or regional water planning group and the district to resolve the conflict. Not later than the 45th day after the date the person or the regional water planning group files a petition with the development board, if the conflict has not been resolved, the district and the involved person or regional planning group may mediate the conflict. The district and the involved person or regional planning group may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the district and the involved person or regional planning group cannot resolve the conflict through mediation, the development board shall resolve the conflict not later than the 60th day after the date the mediation is completed. The development board action under this provision may be consolidated, at the option of the board, with related action under Section 16.053(p). If the development board determines that resolution of the conflict requires a revision of the approved management plan, the development board shall provide information to the district. The district shall prepare any revisions to the plan based on the information provided by the development board and shall hold, after notice, at least one public hearing at some central location within the district. The district shall consider all public and development board comments, prepare, revise, and adopt its management plan, and submit the revised management plan to the development board for approval. On the request of the district or the regional water planning group, the development board shall include discussion of the conflict and its resolution in the state water plan that the development board provides to the governor, the lieutenant governor, and the speaker of the house of representatives under Section 16.051(e). If the groundwater conservation district disagrees with the decision of the development board under this

subsection, the district may appeal the decision to a district court in Travis County. Costs for the appeal shall be set by the court hearing the appeal. An appeal under this subsection is by trial de novo.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.28, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.47, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 6, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 17 (S.B. 727), Sec. 2, eff. April 29, 2011.

Sec. 36.1073. AMENDMENT TO MANAGEMENT PLAN. Any amendment to the management plan shall be submitted to the executive administrator within 60 days following adoption of the amendment by the district's board. The executive administrator shall review and approve any amendment which substantially affects the management plan in accordance with the procedures established under Section 36.1072.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.28, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 7, eff. September 1, 2005.

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) In this section:
(1) "Development board" means the Texas Water Development Board.
(2) "District representative" means the presiding officer or the presiding officer's designee for any district located wholly or partly in the management area.
(b) If two or more districts are located within the boundaries of the same management area, each district shall forward a copy of that district's new or revised management plan to the other districts in the management area. The boards of the districts shall consider the plans individually and shall compare them to other management

plans then in force in the management area.

(c) The district representatives shall meet at least annually to conduct joint planning with the other districts in the management area and to review the management plans, the accomplishments of the management area, and proposals to adopt new or amend existing desired future conditions. In reviewing the management plans, the districts shall consider:

(1) the goals of each management plan and its impact on planning throughout the management area;

(2) the effectiveness of the measures established by each district's management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally;

(3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area; and

(4) the degree to which each management plan achieves the desired future conditions established during the joint planning process.

(d) Not later than May 1, 2021, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall propose for adoption desired future conditions for the relevant aquifers within the management area. Before voting on the proposed desired future conditions of the aquifers under Subsection (d-2), the districts shall consider:

(1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;

(2) the water supply needs and water management strategies included in the state water plan;

(3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;

(4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;

(5) the impact on subsidence;

(6) socioeconomic impacts reasonably expected to occur;

(7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;

(8) the feasibility of achieving the desired future condition; and

(9) any other information relevant to the specific desired future conditions.

(d-1) After considering and documenting the factors described by Subsection (d) and other relevant scientific and hydrogeological data, the districts may establish different desired future conditions for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or

(2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

(d-2) The desired future conditions proposed under Subsection (d) must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. This subsection does not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a). The desired future conditions proposed under Subsection (d) must be approved by a two-thirds vote of all the district representatives for distribution to the districts in the management area. A period of not less than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. During the public comment period and after posting notice as required by Section 36.063, each district shall hold a public hearing on any proposed desired future conditions relevant to that district. During the public comment period, the district shall make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of factors considered under Subsection (d) and groundwater availability model run results. After the close of the public comment period, the district shall compile for consideration at the next joint planning

meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions.

(d-3) After all the districts have submitted their district summaries, the district representatives shall reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and finally adopt the desired future conditions for the management area. The desired future conditions must be approved by a resolution adopted by a two-thirds vote of all the district representatives not later than January 5, 2022. Subsequent desired future conditions must be proposed and finally adopted by the district representatives before the end of each successive five-year period after that date. The district representatives shall produce a desired future conditions explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:

(1) identify each desired future condition;

(2) provide the policy and technical justifications for each desired future condition;

(3) include documentation that the factors under Subsection (d) were considered by the districts and a discussion of how the adopted desired future conditions impact each factor;

(4) list other desired future condition options considered, if any, and the reasons why those options were not adopted; and

(5) discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the desired future conditions.

(d-4) After a district receives notification from the Texas Water Development Board that the desired future conditions resolution and explanatory report under Subsection (d-3) are administratively complete, the district shall adopt the applicable desired future conditions in the resolution and report.

(e) Except as provided by this section, a joint meeting under this section must be held in accordance with Chapter 551, Government Code. Each district shall comply with Chapter 552, Government Code. The district representatives may elect one district to be responsible for providing the notice of a joint meeting that this section would otherwise require of each district in the management area. Notice of

a joint meeting must be provided at least 10 days before the date of the meeting by:

(1) providing notice to the secretary of state;

(2) providing notice to the county clerk of each county located wholly or partly in a district that is located wholly or partly in the management area; and

(3) posting notice at a place readily accessible to the public at the district office of each district located wholly or partly in the management area.

(e-1) The secretary of state and the county clerk of each county described by Subsection (e) shall post notice of the meeting in the manner provided by Section 551.053, Government Code.

(e-2) Notice of a joint meeting must include:

(1) the date, time, and location of the meeting;

(2) a summary of any action proposed to be taken;

(3) the name of each district located wholly or partly in the management area; and

(4) the name, telephone number, and address of one or more persons to whom questions, requests for additional information, or comments may be submitted.

(e-3) The failure or refusal of one or more districts to post notice for a joint meeting under Subsection (e)(3) does not invalidate an action taken at the joint meeting.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.29, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 519, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 966, Sec. 2.48, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 8, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 18 (S.B. 737), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 17, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 785 (S.B. 1282), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 993 (H.B. 200), Sec. 3, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 471 (H.B. 2215), Sec. 2, eff.

June 9, 2017.

Acts 2017, 85th Leg., R.S., Ch. 471 (H.B. 2215), Sec. 3, eff. June 9, 2017.

Sec. 36.1081. TECHNICAL STAFF AND SUBCOMMITTEES FOR JOINT PLANNING. (a) On request, the commission and the Texas Water Development Board shall make technical staff available to serve in a nonvoting advisory capacity to assist with the development of desired future conditions during the joint planning process under Section 36.108.

(b) During the joint planning process under Section 36.108, the district representatives may appoint and convene nonvoting advisory subcommittees who represent social, governmental, environmental, or economic interests to assist in the development of desired future conditions.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 17, eff. September 1, 2011.

Sec. 36.1083. APPEAL OF DESIRED FUTURE CONDITIONS. (a) In this section:

(1) "Affected person" has the meaning assigned by Section 36.1082.

(2) "Development board" means the Texas Water Development Board.

(3) "Office" means the State Office of Administrative Hearings.

(b) Not later than the 120th day after the date on which a district adopts a desired future condition under Section 36.108(d-4), an affected person may file a petition with the district requiring that the district contract with the office to conduct a hearing appealing the reasonableness of the desired future condition. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the management area.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 993 , Sec. 6, eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 993 , Sec. 6,

eff. September 1, 2015.

(e) Not later than the 10th day after receiving a petition described by Subsection (b), the district shall submit a copy of the petition to the development board. On receipt of the petition, the development board shall conduct:

(1) an administrative review to determine whether the desired future condition established by the district meets the criteria in Section 36.108(d); and

(2) a study containing scientific and technical analysis of the desired future condition, including consideration of:

(A) the hydrogeology of the aquifer;

(B) the explanatory report provided to the development board under Section 36.108(d-3);

(C) the factors described under Section 36.108(d); and

(D) any relevant:

(i) groundwater availability models;

(ii) published studies;

(iii) estimates of total recoverable storage capacity;

(iv) average annual amounts of recharge, inflows, and discharge of groundwater; or

(v) information provided in the petition or available to the development board.

(f) The development board must complete and deliver to the office a study described by Subsection (e)(2) not later than the 120th day after the date the development board receives a copy of the petition.

(g) For the purposes of a hearing conducted under Subsection (b):

(1) the office shall consider the study described by Subsection (e)(2) and the desired future conditions explanatory report submitted to the development board under Section 36.108(d-3) to be part of the administrative record; and

(2) the development board shall make available relevant staff as expert witnesses if requested by the office or a party to the hearing.

(h) Not later than the 60th day after receiving a petition under Subsection (b), the district shall:

(1) contract with the office to conduct the contested case hearing requested under Subsection (b); and

(2) submit to the office a copy of any petitions related to the hearing requested under Subsection (b) and received by the district.

(i) A hearing under Subsection (b) must be held:

(1) at a location described by Section 36.403(c); and

(2) in accordance with Chapter 2001, Government Code, and the rules of the office.

(j) During the period between the filing of the petition and the delivery of the study described by Subsection (e)(2), the district may seek the assistance of the Center for Public Policy Dispute Resolution, the development board, or another alternative dispute resolution system to mediate the issues raised in the petition. If the district and the petitioner cannot resolve the issues raised in the petition, the office will proceed with a hearing as described by this section.

(k) The district may adopt rules for notice and hearings conducted under this section that are consistent with the procedural rules of the office. In accordance with rules adopted by the district and the office, the district shall provide:

(1) general notice of the hearing; and

(2) individual notice of the hearing to:

(A) the petitioner;

(B) any person who has requested notice;

(C) each nonparty district and regional water planning group located in the same management area as a district named in the petition;

(D) the development board; and

(E) the commission.

(l) Before a hearing conducted under this section, the office shall hold a prehearing conference to determine preliminary matters, including:

(1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;

(2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and

(3) which affected persons shall be named as parties to the hearing.

(m) The petitioner shall pay the costs associated with the contract for the hearing under this section. The petitioner shall deposit with the district an amount sufficient to pay the contract

amount before the hearing begins. After the hearing, the office may assess costs to one or more of the parties participating in the hearing and the district shall refund any excess money to the petitioner. The office shall consider the following in apportioning costs of the hearing:

(1) the party who requested the hearing;

(2) the party who prevailed in the hearing;

(3) the financial ability of the party to pay the costs;

(4) the extent to which the party participated in the hearing; and

(5) any other factor relevant to a just and reasonable assessment of costs.

(n) On receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, the district shall issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law. The district 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, as provided by Section 2001.058(e), Government Code.

(o) If the district vacates or modifies the proposal for decision, the district shall issue a report describing in detail the district's reasons for disagreement with the administrative law judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the district's decision.

(p) If the district in its final order finds that a desired future condition is unreasonable, not later than the 60th day after the date of the final order, the districts in the same management area as the district that received the petition shall reconvene in a joint planning meeting for the purpose of revising the desired future condition. The districts in the management area shall follow the procedures in Section 36.108 to adopt new desired future conditions applicable to the district that received the petition.

(q) A final order by the district finding that a desired future condition is unreasonable does not invalidate the adoption of a desired future condition by a district that did not participate as a party in the hearing conducted under this section.

(r) The administrative law judge may consolidate hearings

requested under this section that affect two or more districts. The administrative law judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 17, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 993 (H.B. 200), Sec. 4, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 993 (H.B. 200), Sec. 6, eff. September 1, 2015.

Sec. 36.10835. JUDICIAL APPEAL OF DESIRED FUTURE CONDITIONS. (a) A final district order issued under Section 36.1083 may be appealed to a district court with jurisdiction over any part of the territory of the district that issued the order. An appeal under this subsection must be filed with the district court not later than the 45th day after the date the district issues the final order. The case shall be decided under the substantial evidence standard of review as provided by Section 2001.174, Government Code. If the court finds that a desired future condition is unreasonable, the court shall strike the desired future condition and order the districts in the same management area as the district that received the petition to reconvene not later than the 60th day after the date of the court order in a joint planning meeting for the purpose of revising the desired future condition. The districts in the management area shall follow the procedures in Section 36.108 to adopt new desired future conditions applicable to the district that received the petition.

(b) A court's finding under this section does not apply to a desired future condition that is not a matter before the court.

Added by Acts 2015, 84th Leg., R.S., Ch. 993 (H.B. 200), Sec. 5, eff. September 1, 2015.

Sec. 36.1084. MODELED AVAILABLE GROUNDWATER. (a) The Texas Water Development Board shall require the districts in a management area to submit to the executive administrator not later than the 60th

day after the date on which the districts adopted desired future conditions under Section 36.108(d-3):

(1) the desired future conditions adopted under Section 36.108;

(2) proof that notice was posted for the joint planning meeting; and

(3) the desired future conditions explanatory report.

(b) The executive administrator shall provide each district and regional water planning group located wholly or partly in the management area with the modeled available groundwater in the management area based upon the desired future conditions adopted by the districts.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 17, eff. September 1, 2011.

Sec. 36.1085. MANAGEMENT PLAN GOALS AND OBJECTIVES. Each district in the management area shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 17, eff. September 1, 2011.

Sec. 36.1086. JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT AREA. Districts located within the same management areas or in adjacent management areas may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment or conveyance facilities. The districts may contract under their existing authorizations including those of Chapter 791, Government Code, if their contracting authority is not limited by Sections 791.011(c)(2) and (d)(3) and Section

791.014, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 17, eff. September 1, 2011.

Sec. 36.109. COLLECTION OF INFORMATION. A district may collect any information the board deems necessary, including information regarding the use of groundwater, water conservation, and the practicability of recharging a groundwater reservoir. At the request of the executive administrator, the district shall provide any data collected by the district in a format acceptable to the executive administrator.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 9, eff. September 1, 2005.

Sec. 36.110. PUBLICATION OF PLANS AND INFORMATION. A district may publish its plans and the information it develops, bring them to the attention of the users of groundwater in the district, and encourage the users to adopt and use them.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.111. RECORDS AND REPORTS. (a) The district may require that records be kept and reports be made of the drilling, equipping, and completing of water wells and of the production and use of groundwater.

(b) In implementing Subsection (a), a district may adopt rules that require an owner or operator of a water well that is required to be registered with or permitted by the district, except for the owner or operator of a well that is exempt from permit requirements under Section 36.117(b)(1), to report groundwater withdrawals using reasonable and appropriate reporting methods and frequency.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 523 (S.B. 714), Sec. 1, eff. September 1, 2007.

Sec. 36.112. DRILLERS' LOGS. A district shall require that accurate drillers' logs be kept of water wells and that copies of drillers' logs and electric logs be filed with the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.113. PERMITS FOR WELLS; PERMIT AMENDMENTS. (a) Except as provided by Section 36.117, a district shall require a permit for the drilling, equipping, operating, or completing of wells or for substantially altering the size of wells or well pumps. A district may require that a change in the withdrawal or use of groundwater during the term of a permit issued by the district may not be made unless the district has first approved a permit amendment authorizing the change.

(a-1) A district may not require a permit or a permit amendment for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than its authorized or permitted production rate.

(b) A district shall require that an application for a permit or a permit amendment be in writing and sworn to.

(c) A district may require that only the following be included in the permit or permit amendment application, as applicable under the rules of the district:

(1) the name and mailing address of the applicant and the owner of the land on which the well will be located;

(2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;

(3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;

(4) a water conservation plan or a declaration that the applicant will comply with the district's management plan;

(5) the location of each well and the estimated rate at which water will be withdrawn;

(6) a water well closure plan or a declaration that the

applicant will comply with well plugging guidelines and report closure to the commission;

(7) a drought contingency plan; and

(8) other information:

(A) included in a rule of the district in effect on the date the application is submitted that specifies what information must be included in an application for a determination of administrative completeness; and

(B) reasonably related to an issue that a district by law is authorized to consider.

(d) This subsection does not apply to the renewal of an operating permit issued under Section 36.1145. Before granting or denying a permit, or a permit amendment issued in accordance with Section 36.1146, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's approved management plan;

(5) if the well will be located in the Hill Country Priority Groundwater Management Area, the proposed use of water from the well is wholly or partly to provide water to a pond, lake, or reservoir to enhance the appearance of the landscape;

(6) the applicant has agreed to avoid waste and achieve water conservation; and

(7) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

(e) The district may impose more restrictive permit conditions on new permit applications and permit amendment applications to increase use by historic users if the limitations:

(1) apply to all subsequent new permit applications and permit amendment applications to increase use by historic users, regardless of type or location of use;

(2) bear a reasonable relationship to the existing district management plan; and

(3) are reasonably necessary to protect existing use.

(f) This subsection does not apply to the renewal of an operating permit issued under Section 36.1145. Permits, and permit amendments issued in accordance with Section 36.1146, may be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the drilling, equipping, completion, alteration, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

(h) In issuing a permit for an existing or historic use, a district may not discriminate between land that is irrigated for production and land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program.

(i) A permitting decision by a district is void if:

(1) the district makes its decision in violation of Subsection (h); and

(2) the district would have reached a different decision if the district had treated land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program the same as land irrigated for production.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.30, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.49, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 10, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1116 (H.B. 2423), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.21, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 17 (S.B. 727), Sec. 4, eff. April 29, 2011.

Acts 2015, 84th Leg., R.S., Ch. 308 (S.B. 854), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1119 (S.B. 1009), Sec. 1, eff. September 1, 2017.

Sec. 36.1131. ELEMENTS OF PERMIT. (a) A permit issued by the district to the applicant under Section 36.113 shall state the terms and provisions prescribed by the district.

(b) The permit may include:

(1) the name and address of the person to whom the permit is issued;

(2) the location of the well;

(3) the date the permit is to expire if no well is drilled;

(4) a statement of the purpose for which the well is to be used;

(5) a requirement that the water withdrawn under the permit be put to beneficial use at all times;

(6) the location of the use of the water from the well;

(7) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the commission;

(8) the conditions and restrictions, if any, placed on the rate and amount of withdrawal;

(9) any conservation-oriented methods of drilling and operating prescribed by the district;

(10) a drought contingency plan prescribed by the district; and

(11) other terms and conditions as provided by Section 36.113.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.31, eff. Sept. 1, 1997.

Sec. 36.1132. PERMITS BASED ON MODELED AVAILABLE GROUNDWATER. (a) A district, to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition under Section 36.108.

(b) In issuing permits, the district shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:

(1) the modeled available groundwater determined by the executive administrator;

(2) the executive administrator's estimate of the current

and projected amount of groundwater produced under exemptions granted by district rules and Section 36.117;

(3) the amount of groundwater authorized under permits previously issued by the district;

(4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the district; and

(5) yearly precipitation and production patterns.

(c) In developing the estimate of exempt use under Subsection (b)(2), the executive administrator shall solicit information from each applicable district.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 11, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 18 (S.B. 737), Sec. 4, eff. September 1, 2011.

Sec. 36.114. PERMIT; PERMIT AMENDMENT; APPLICATION AND HEARING. (a) The district by rule shall determine each activity regulated by the district for which a permit or permit amendment is required.

(b) For each activity for which the district determines a permit or permit amendment is required under Subsection (a), and that is not exempt from a hearing requirement under Section 36.1145, the district by rule shall determine whether a hearing on the permit or permit amendment application is required.

(c) For all applications for which a hearing is not required under Subsection (b) or Section 36.1145, the board shall act on the application at a meeting, as defined by Section 551.001, Government Code, unless the board by rule has delegated to the general manager the authority to act on the application.

(d) The district shall promptly consider and act on each administratively complete application for a permit or permit amendment as provided by Subsection (c) or Subchapter M.

(e) If, within 60 days after the date an administratively complete application is submitted, the application has not been acted on or set for a hearing on a specific date, the applicant may petition the district court of the county where the land is located for a writ of mandamus to compel the district to act on the application or set a date for a hearing on the application, as

appropriate.

(f) For applications requiring a hearing, the initial hearing shall be held within 35 days after the setting of the date, and the district shall act on the application within 60 days after the date the final hearing on the application is concluded.

(g) The district may by rule set a time when an application will expire if the information requested in the application is not provided to the district.

(h) An application is administratively complete if it contains the information set forth under Sections 36.113 and 36.1131. A district shall not require that additional information be included in an application for a determination of administrative completeness.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 319, Sec. 1, eff. May 24, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 10, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 308 (S.B. 854), Sec. 3, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1119 (S.B. 1009), Sec. 2, eff. September 1, 2017.

Sec. 36.1145. OPERATING PERMIT RENEWAL. (a) Except as provided by Subsection (b), a district shall without a hearing renew or approve an application to renew an operating permit before the date on which the permit expires, provided that:

(1) the application, if required by the district, is submitted in a timely manner and accompanied by any required fees in accordance with district rules; and

(2) the permit holder is not requesting a change related to the renewal that would require a permit amendment under district rules.

(b) A district is not required to renew a permit under this section if the applicant:

(1) is delinquent in paying a fee required by the district;

(2) is subject to a pending enforcement action for a substantive violation of a district permit, order, or rule that has not been settled by agreement with the district or a final

adjudication; or

(3) has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a district permit, order, or rule.

(c) If a district is not required to renew a permit under Subsection (b)(2), the permit remains in effect until the final settlement or adjudication on the matter of the substantive violation.

Added by Acts 2015, 84th Leg., R.S., Ch. 308 (S.B. 854), Sec. 4, eff. September 1, 2015.

Sec. 36.1146. CHANGE IN OPERATING PERMITS. (a) If the holder of an operating permit, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under district rules, the permit as it existed before the permit amendment process remains in effect until the later of:

(1) the conclusion of the permit amendment or renewal process, as applicable; or

(2) final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment.

(b) If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed under Section 36.1145 without penalty, unless Subsection (b) of that section applies to the applicant.

(c) A district may initiate an amendment to an operating permit, in connection with the renewal of a permit or otherwise, in accordance with the district's rules. If a district initiates an amendment to an operating permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

Added by Acts 2015, 84th Leg., R.S., Ch. 308 (S.B. 854), Sec. 4, eff. September 1, 2015.

Sec. 36.115. DRILLING OR ALTERING WELL WITHOUT PERMIT. (a) No person, firm, or corporation may drill a well without first obtaining a permit from the district.

(b) No person, firm, or corporation may alter the size of a

well or well pump such that it would bring that well under the jurisdiction of the district without first obtaining a permit from the district.

(c) No person, firm, or corporation may operate a well without first obtaining a permit from the district.

(d) A violation occurs on the first day the drilling, alteration, or operation begins and continues each day thereafter until the appropriate permits are approved.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.116. REGULATION OF SPACING AND PRODUCTION. (a) In order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, a district by rule may regulate:

(1) the spacing of water wells by:

(A) requiring all water wells to be spaced a certain distance from property lines or adjoining wells;

(B) requiring wells with a certain production capacity, pump size, or other characteristic related to the construction or operation of and production from a well to be spaced a certain distance from property lines or adjoining wells; or

(C) imposing spacing requirements adopted by the board; and

(2) the production of groundwater by:

(A) setting production limits on wells;

(B) limiting the amount of water produced based on acreage or tract size;

(C) limiting the amount of water that may be produced from a defined number of acres assigned to an authorized well site;

(D) limiting the maximum amount of water that may be produced on the basis of acre-feet per acre or gallons per minute per well site per acre;

(E) managed depletion; or

(F) any combination of the methods listed above in Paragraphs (A) through (E).

(b) In promulgating any rules limiting groundwater production, the district may preserve historic or existing use before the

effective date of the rules to the maximum extent practicable consistent with the district's management plan under Section 36.1071 and as provided by Section 36.113.

(c) In regulating the production of groundwater based on tract size or acreage, a district may consider the service needs or service area of a retail public utility. For the purposes of this subsection, "retail public utility" shall have the meaning provided by Section 13.002.

(d) For better management of the groundwater resources located in a district or if a district determines that conditions in or use of an aquifer differ substantially from one geographic area of the district to another, the district may adopt different rules for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the district; or

(2) each geographic area overlying an aquifer or subdivision of an aquifer located in whole or in part within the boundaries of the district.

(e) In regulating the production of groundwater under Subsection (a)(2), a district:

(1) shall select a method that is appropriate based on the hydrogeological conditions of the aquifer or aquifers in the district; and

(2) may limit the amount of water produced based on contiguous surface acreage.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1164, Sec. 1, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 966, Sec. 2.50, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1242, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 18.006, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 12, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 17 (S.B. 727), Sec. 5, eff. April 29, 2011.

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 6, eff. June 10, 2015.

Sec. 36.117. EXEMPTIONS; EXCEPTION; LIMITATIONS. (a) A district by rule may provide an exemption from the district's requirement to obtain any permit required by this chapter or the district's rules.

(b) Except as provided by this section, a district shall provide an exemption from the district requirement to obtain a permit for:

(1) drilling or operating a well used solely for domestic use or for providing water for livestock or poultry if the well is:

(A) located or to be located on a tract of land larger than 10 acres; and

(B) drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

(2) drilling a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig; or

(3) drilling a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.

(c) A district may not restrict the production of water from any well described by Subsection (b)(1).

(d) A district may cancel a previously granted exemption and may require an operating permit for or restrict production from a well and assess any appropriate fees if:

(1) the groundwater withdrawals that were exempted under Subsection (b)(1) are no longer used solely for domestic use or to provide water for livestock or poultry;

(2) the groundwater withdrawals that were exempted under Subsection (b)(2) are no longer used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas; or

(3) the groundwater withdrawals that were exempted under Subsection (b)(3) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under

Chapter 134, Natural Resources Code.

(e) An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well shall report monthly to the district:

(1) the total amount of water withdrawn during the month;

(2) the quantity of water necessary for mining activities; and

(3) the quantity of water withdrawn for other purposes.

(f) A district may require compliance with the district's well spacing rules for the drilling of any well except a well exempted under Subsection (b)(3).

(g) A district may not deny an application for a permit to drill and produce water for hydrocarbon production activities if the application meets all applicable rules as promulgated by the district.

(h) A district shall require the owner of a water well to:

(1) register the well in accordance with rules promulgated by the district; and

(2) equip and maintain the well to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

(i) The driller of a well shall file with the district the well log required by Section 1901.251, Occupations Code, and, if available, the geophysical log.

(j) An exemption provided under Subsection (b) does not apply to a well if the groundwater withdrawn is used to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code.

(k) Groundwater withdrawn under an exemption provided in accordance with this section and subsequently transported outside the boundaries of the district is subject to any applicable production and export fees under Sections 36.122 and 36.205.

(l) This chapter applies to water wells, including water wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals. This chapter does not apply to production or injection wells drilled for oil, gas, sulphur,

uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluids, under permits issued by the Railroad Commission of Texas.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.32, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 239, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.51, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.22, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 16 (S.B. 691), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 32 (S.B. 692), Sec. 1, eff. May 9, 2011.

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 7, eff. June 10, 2015.

Sec. 36.118. OPEN OR UNCOVERED WELLS. (a) A district may require the owner or lessee of land on which an open or uncovered well is located to keep the well permanently closed or capped with a covering capable of sustaining weight of at least 400 pounds, except when the well is in actual use.

(b) As used in this section, "open or uncovered well" means an artificial excavation dug or drilled for the purpose of exploring for or producing water from the groundwater reservoir and is not capped or covered as required by this chapter.

(c) If the owner or lessee fails or refuses to close or cap the well in compliance with this chapter in accordance with district rules, any person, firm, or corporation employed by the district may go on the land and close or cap the well safely and securely.

(d) Reasonable expenses incurred by the district in closing or capping a well constitute a lien on the land on which the well is located.

(e) The lien arises and attaches upon recordation in the deed records of the county where the well is located an affidavit, executed by any person conversant with the facts, stating the following:

(1) the existence of the well;

(2) the legal description of the property on which the well is located;

(3) the approximate location of the well on the property;

(4) the failure or refusal of the owner or lessee, after notification, to close the well within 10 days after the notification;

(5) the closing of the well by the district, or by an authorized agent, representative, or employee of the district; and

(6) the expense incurred by the district in closing the well.

(f) Nothing in this section affects the enforcement of Subchapter A, Chapter 756, Health and Safety Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.119. ILLEGAL DRILLING AND OPERATION OF WELL; CITIZEN SUIT. (a) Drilling or operating a well or wells without a required permit or producing groundwater in violation of a district rule adopted under Section 36.116(a)(2) is declared to be illegal, wasteful per se, and a nuisance.

(b) Except as provided by this section, a landowner or other person who has a right to produce groundwater from land that is adjacent to the land on which a well or wells are drilled or operated without a required permit or permits or from which groundwater is produced in violation of a district rule adopted under Section 36.116(a)(2), or who owns or otherwise has a right to produce groundwater from land that lies within one-half mile of the well or wells, may sue the owner of the well or wells in a court of competent jurisdiction to restrain or enjoin the illegal drilling, operation, or both. The suit may be brought with or without the joinder of the district.

(c) Except as provided by this section, the aggrieved party may also sue the owner of the well or wells for damages for injuries suffered by reason of the illegal operation or production and for other relief to which the party may be entitled. In a suit for damages against the owner of the well or wells, the existence of a well or wells drilled without a required permit or the operation of a well or wells in violation of a district rule adopted under Section 36.116(a)(2) is prima facie evidence of illegal drainage.

(d) The suit may be brought in the county where the illegal well is located or in the county where all or part of the affected land is located.

(e) The remedies provided by this section are cumulative of other remedies available to the individual or the district.

(f) A suit brought under this section shall be advanced for trial and determined as expeditiously as possible. The court shall not grant a postponement or continuance, including a first motion, except for reasons considered imperative by the court.

(g) Before filing a suit under Subsection (b) or (c), an aggrieved party must file a written complaint with the district having jurisdiction over the well or wells drilled or operated without a required permit or in violation of a district rule. The district shall investigate the complaint and, after notice and hearing and not later than the 90th day after the date the written complaint was received by the district, the district shall determine, based on the evidence presented at the hearing, whether a district rule has been violated. The aggrieved party may only file a suit under this section on or after the 91st day after the date the written complaint was received by the district.

(h) Notwithstanding Subsection (g), an aggrieved party under Subsection (b) may sue a well owner or well driller in a court of competent jurisdiction to restrain or enjoin the drilling or completion of an illegal well after filing the written complaint with the district under Subsection (g) and without the need to wait for a hearing on the matter.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1321 (S.B. 1383), Sec. 1, eff. June 15, 2007.

Sec. 36.120. INFORMATION. On request of the executive director or the executive administrator, the district shall make available information that it acquires concerning the groundwater resources within its jurisdiction. The district shall also provide information to the commission and Texas Water Development Board concerning its plans and activities in conserving and protecting groundwater resources. On request of a district, the executive director and the

executive administrator shall provide information they acquire concerning the groundwater resources within the district's jurisdiction.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.121. LIMITATION ON RULEMAKING POWER OF DISTRICTS OVER WELLS IN CERTAIN COUNTIES. Except as provided by Section 36.117, a district that is created under this chapter on or after September 1, 1991, shall exempt from regulation under this chapter a well and any water produced or to be produced by a well that is located in a county that has a population of 14,000 or less if the water is to be used solely to supply a municipality that has a population of 121,000 or less and the rights to the water produced from the well are owned by a political subdivision that is not a municipality, or by a municipality that has a population of 115,000 or less, and that purchased, owned, or held rights to the water before the date on which the district was created, regardless of the date the well is drilled or the water is produced. The district may not prohibit the political subdivision or municipality from transporting produced water inside or outside the district's boundaries.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 966, Sec. 11.04, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1042 (H.B. 3109), Sec. 1, eff. June 17, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 181, eff. September 1, 2011.
Reenacted by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 21.002, eff. September 1, 2013.

Sec. 36.122. TRANSFER OF GROUNDWATER OUT OF DISTRICT. (a) If an application for a permit or an amendment to a permit under Section 36.113 proposes the transfer of groundwater outside of a district's boundaries, the district may also consider the provisions of this section in determining whether to grant or deny the permit or permit amendment.

(b) A district may promulgate rules requiring a person to obtain a permit or an amendment to a permit under Section 36.113 from the district for the transfer of groundwater out of the district to:

(1) increase, on or after March 2, 1997, the amount of groundwater to be transferred under a continuing arrangement in effect before that date; or

(2) transfer groundwater out of the district on or after March 2, 1997, under a new arrangement.

(c) Except as provided in Section 36.113(e), the district may not impose more restrictive permit conditions on transporters than the district imposes on existing in-district users.

(d) The district may impose a reasonable fee for processing an application under this section. The fee may not exceed fees that the district imposes for processing other applications under Section 36.113. An application filed to comply with this section shall be considered and processed under the same procedures as other applications for permits under Section 36.113 and shall be combined with applications filed to obtain a permit for in-district water use under Section 36.113 from the same applicant.

(e) The district may impose an export fee or surcharge using one of the following methods:

(1) a fee negotiated between the district and the exporter;

(2) a rate not to exceed the equivalent of the district's tax rate per hundred dollars of valuation for each thousand gallons of water exported from the district or 2.5 cents per thousand gallons of water, if the district assesses a tax rate of less than 2.5 cents per hundred dollars of valuation; or

(3) for a fee-based district, a 50 percent surcharge, in addition to the district's production fee, for water exported from the district.

(f) In reviewing a proposed transfer of groundwater out of the district, the district shall consider:

(1) the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested;

(2) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district; and

(3) the approved regional water plan and approved district management plan.

(g) The district may not deny a permit based on the fact that the applicant seeks to transfer groundwater outside of the district but may limit a permit issued under this section if conditions in Subsection (f) warrant the limitation, subject to Subsection (c).

(h) In addition to conditions provided by Section 36.1131, the permit shall specify:

(1) the amount of water that may be transferred out of the district; and

(2) the period for which the water may be transferred.

(i) The period specified by Subsection (h)(2) shall be:

(1) at least three years if construction of a conveyance system has not been initiated prior to the issuance of the permit; or

(2) at least 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit.

(j) A term under Subsection (i)(1) shall automatically be extended to the terms agreed to under Subsection (i)(2) if construction of a conveyance system is begun before the expiration of the initial term.

(j-1) A district shall extend a term under Subsection (i)(2) or (j) on or before its expiration in the manner prescribed by Section 36.1145:

(1) to a term that is not shorter than the term of an operating permit for the production of water to be transferred that is in effect at the time of the extension; and

(2) for each additional term for which that operating permit for production is renewed under Section 36.1145 or remains in effect under Section 36.1146.

(j-2) A permit extended under Subsection (j-1) continues to be subject to conditions contained in the permit as issued before the extension.

(k) Notwithstanding the period specified under Subsection (i), (j), or (j-1) during which water may be transferred under a permit, a district may periodically review the amount of water that may be transferred under the permit and may limit the amount if additional factors considered in Subsection (f) warrant the limitation, subject to Subsection (c). The review described by this subsection may take place not more frequently than the period provided for the review or renewal of regular permits issued by the district. In its determination of whether to renew a permit issued under this section,

the district shall consider relevant and current data for the conservation of groundwater resources and shall consider the permit in the same manner it would consider any other permit in the district.

(l) A district is prohibited from using revenues obtained under Subsection (e) to prohibit the transfer of groundwater outside of a district. A district is not prohibited from using revenues obtained under Subsection (e) for paying expenses related to enforcement of this chapter or district rules.

(m) A district may not prohibit the export of groundwater if the purchase was in effect on or before June 1, 1997.

(n) This section applies only to a transfer of water that is permitted after September 1, 1997.

(o) A district shall adopt rules as necessary to implement this section but may not adopt rules expressly prohibiting the export of groundwater.

(p) Subsection (e) does not apply to a district that is collecting an export fee or surcharge on March 1, 2001.

(q) In applying this section, a district must be fair, impartial, and nondiscriminatory.

(r) The district may grant or deny an application to extend a term under Subsection (i)(2) or (j) submitted under this section only using rules that were in effect at the time the application was submitted.

(s) An application to extend a term under Subsection (i)(2) or (j) is governed solely by district rules consistent with Subsection (j-1).

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.33, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.52, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 17 (S.B. 727), Sec. 6, eff. April 29, 2011.

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 8, eff. June 10, 2015.

Acts 2019, 86th Leg., R.S., Ch. 96 (H.B. 1066), Sec. 1, eff. September 1, 2019.

Sec. 36.123. RIGHT TO ENTER LAND. (a) The directors, engineers, attorneys, agents, operators, and employees of a district or water supply corporation may go on any land to inspect, make surveys, or perform tests to determine the condition, value, and usability of the property, with reference to the proposed location of works, improvements, plants, facilities, equipment, or appliances. The cost of restoration shall be borne by the district or the water supply corporation.

(b) District employees and agents are entitled to enter any public or private property within the boundaries of the district or adjacent to any reservoir or other property owned by the district at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the district. District employees or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

Added by Acts 1999, 76th Leg., ch. 1354, Sec. 3, eff. Sept. 1, 1999.

Sec. 36.124. DISTRICT ACT OR PROCEEDING PRESUMED VALID. (a) A governmental act or proceeding of a district is conclusively presumed, as of the date it occurred, valid and to have occurred in accordance with all applicable statutes and rules if:

(1) the third anniversary of the effective date of the act or proceeding has expired; and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.

(b) This section does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;

(3) a rule that, at the time it was passed, was preempted by a statute of this state or the United States, including Section 1.06 or 109.57, Alcoholic Beverage Code; or

(4) a matter that on the effective date of this section:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(B) has been held invalid by a final judgment of a court.

Added by Acts 2001, 77th Leg., ch. 389, Sec. 1, eff. May 28, 2001.

SUBCHAPTER E. DISTRICT FINANCES

Sec. 36.151. EXPENDITURES. (a) A district's money may be disbursed only by check, draft, order, or other instrument.

(b) Disbursements, other than federal reserve wire transfers or electronic fund transfers, shall be signed by at least two directors, except the board may by resolution allow certain employees of the district, or a combination of employees and directors, to sign disbursements on behalf of the board. The board may authorize payroll disbursements by electronic direct deposit.

(c) The board may by resolution allow disbursements to be transferred by federal reserve wire system, or by electronic means, to accounts in the name of the district or accounts not in the name of the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 585 (S.B. 865), Sec. 1, eff. June 9, 2017.

Sec. 36.152. FISCAL YEAR. (a) The district shall be operated on the basis of a fiscal year established by the board.

(b) The fiscal year may not be changed during a period in which revenue bonds of the district are outstanding or more than once in a 24-month period.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.153. ANNUAL AUDIT. (a) Annually and subject to Subsection (c), the board shall have an audit made of the financial

condition of the district. The district audit shall be performed according to the generally accepted government auditing standards adopted by the American Institute of Certified Public Accountants.

(b) Financial statements shall be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants. The annual audit and other district records must be open to inspection during regular business hours at the principal office of the district.

(c) The district is exempt from the requirement under Subsection (a) if it had:

(1) not more than $500 in receipts from operations, tax assessments, loans, contributions, or any other sources during the calendar year;

(2) not more than $500 in disbursements of funds during the calendar year;

(3) no bonds or other liabilities with terms of more than one year outstanding during the calendar year; and

(4) no cash or investments amounting to more than $5,000 at any time during the calendar year.

(d) A financially dormant district may elect not to conduct an audit and instead submit to the executive director a financial dormancy affidavit.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 785, Sec. 52, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 9, eff. June 10, 2015.

Sec. 36.154. ANNUAL BUDGET. (a) The board shall prepare and approve an annual budget.

(b) The budget shall contain a complete financial statement, including a statement of:

(1) the outstanding obligations of the district;

(2) the amount of cash on hand to the credit of each fund of the district;

(3) the amount of money received by the district from all sources during the previous year;

(4) the amount of money available to the district from all sources during the ensuing year;

(5) the amount of the balances expected at the end of the year in which the budget is being prepared;

(6) the estimated amount of revenues and balances available to cover the proposal budget; and

(7) the estimated tax rate or fee revenues that will be required.

(c) The annual budget may be amended on the board's approval.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.155. DEPOSITORY. (a) The board shall name one or more banks to serve as depository for the district funds.

(b) District funds, other than those transmitted to a bank for payment of bonds issued by the district, shall be deposited as received with the depository bank and shall remain on deposit. This subsection does not limit the power of the board to place a portion of the district's funds on time deposit or to purchase certificates of deposit.

(c) To the extent that funds in the depository are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of funds by the Public Funds Collateral Act, Chapter 2257, Government Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.156. INVESTMENTS. (a) Funds of the district may be invested and reinvested in accordance with the provisions of the Public Funds Investment Act, Chapter 2256, Government Code.

(b) The board, by resolution, may provide that an authorized representative of the district may invest and reinvest the funds of the district and provide for money to be withdrawn from the appropriate accounts of the district for investments on such terms as the board considers advisable.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.1561. INVESTMENT OFFICER. (a) Notwithstanding Section 2256.005(f), Government Code, the board may contract with a person to act as investment officer of the district.

(b) The investment officer of a district shall:

(1) not later than the first anniversary of the date the officer takes office or assumes the officer's duties, attend a training session of at least six hours of instruction relating to investment responsibilities under Chapter 2256, Government Code; and

(2) attend at least four hours of additional investment training within each two-year period after the first year.

(c) Training under this section must be from an independent source approved by:

(1) the board; or

(2) a designated investment committee advising the investment officer.

(d) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with Chapter 2256, Government Code.

(e) During January of each year, each individual, association, business, organization, governmental entity, or other person that provides training under this section shall report to the comptroller a list of the districts for which the person provided required training under this section during the previous calendar year. An individual's reporting requirements under this subsection are satisfied by a report of the individual's employer or the sponsoring or organizing entity of a training program or seminar.

Added by Acts 2001, 77th Leg., ch. 69, Sec. 1, eff. May 14, 2001.

Sec. 36.157. REPAYMENT OF ORGANIZATIONAL EXPENSES. (a) A district, or the county or counties where the district is to be located, may pay all costs and expenses necessarily incurred in the creation and organization of a district, including legal fees and other incidental expenses, and may reimburse any person, including a county, for money advanced for these purposes.

(b) Payments may be made from money obtained from the sale of bonds first issued by the district or out of maintenance taxes or other revenues of the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 10, eff. June 10, 2015.

Sec. 36.158. GRANTS. A district may make or accept grants, gratuities, advances, or loans in any form to or from any source approved by the board, including any governmental entity, and may enter into contracts, agreements, and covenants in connection with grants, gratuities, advances, or loans that the board considers appropriate.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.159. GROUNDWATER CONSERVATION DISTRICT MANAGEMENT PLAN FUNDS. The Texas Water Development Board may allocate funds from the water assistance fund to a district to:

(1) conduct initial data collections under this chapter;

(2) develop and implement a long-term management plan under Section 36.1071; and

(3) participate in regional water plans.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.34, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 11, eff. June 10, 2015.

Sec. 36.160. FUNDS. The Texas Water Development Board, the commission, the Parks and Wildlife Department, the Texas Agricultural Extension Service, and institutions of higher education may allocate funds to carry out the objectives of this chapter and Chapter 35, which include but are not limited to:

(1) conducting initial and subsequent studies and surveys under Sections 36.106, 36.107, and 36.109;

(2) providing appropriate education in affected areas identified in Section 35.007 relating to the problems and issues concerning water management that may arise;

(3) processing priority groundwater management area evaluations under this chapter and Chapter 35;

(4) providing technical and administrative assistance to newly created districts under this chapter and Chapter 35;

(5) covering the costs of newspaper notices required under Sections 35.009 and 36.014 and failed elections in accordance with Sections 35.014(c), 36.017(h), and 36.019; and

(6) providing for assistance from the Parks and Wildlife Department to the Texas Water Development Board or a district for the purpose of assessing fish and wildlife resource habitat needs as they may apply to overall management plan goals and objectives of the district.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.34, eff. Sept. 1, 1997.

Sec. 36.161. ELIGIBILITY FOR FUNDING. (a) The Texas Water Development Board may provide funds under Sections 36.159 and 36.160, Chapters 15, 16, and 17, and Subchapter L of this chapter to a district if the Texas Water Development Board determines that such funding will allow the district to comply or continue to comply with provisions of this chapter.

(b) The Texas Water Development Board may, after notice and hearing, discontinue funding described in Subsection (a) if the Texas Water Development Board finds that the district is not using the funds to comply with the provisions of this chapter.

(c) The Texas Water Development Board, when considering a discontinuance under Subsection (b), shall give written notice of the hearing to the district at least 20 days before the date set for the hearing. The hearing shall be conducted in accordance with Chapter 2001, Government Code, or the rules of the respective agency. General notice of the hearing shall be given in accordance with the rules of the agency.

(d) The Texas Water Development Board may delegate to the State Office of Administrative Hearings the responsibility to conduct a hearing under this section.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.34, eff. Sept. 1, 1997.

SUBCHAPTER F. BONDS AND NOTES

Sec. 36.171. ISSUANCE OF BONDS AND NOTES. (a) The board may issue and sell bonds and notes in the name of the district for any lawful purpose of the district. A district may not issue bonds unless the commission determines that the project to be financed by the bonds is feasible and issues an order approving the issuance of the bonds. This section does not apply to refunding bonds.

(b) A district may submit to the commission a written application for investigation of feasibility. An engineer's report describing the project, including the data, profiles, maps, plans, and specifications prepared in connection with the report, must be submitted with the application.

(c) The executive director shall examine the application and the report and shall inspect the project area. The district shall, on request, supply the executive director with additional data and information necessary for an investigation of the application, the engineer's report, and the project.

(d) The executive director shall prepare a written report on the project and include suggestions, if any, for changes or improvements in the project. The executive director shall retain a copy of the report and send a copy of the report to both the commission and the district.

(e) The commission shall consider the application, the engineer's report, the executive director's report, and any other evidence allowed by commission rule to be considered in determining the feasibility of the project.

(f) The commission shall determine whether the project to be financed by the bonds is feasible and issue an order either approving or disapproving, as appropriate, the issuance of the bonds. The commission shall retain a copy of the order and send a copy of the order to the district.

(g) Notwithstanding any provision of this code to the contrary, the commission may approve the issuance of bonds of a district without the submission of plans and specifications of the improvements to be financed with the bonds. The commission may condition the approval on any terms or conditions considered appropriate by the commission.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.172. MANNER OF REPAYMENT OF BONDS AND NOTES. The board may provide for the payment of principal of and interest on the bonds and notes in any one of the following manners:

(1) from the levy and collection of ad valorem taxes on taxable property within the district;

(2) from fees;

(3) by pledging all or any part of the designated revenues from the ownership or operation of the district's works, improvements, and facilities and from the sale, transportation, and distribution of water; or

(4) from any combination of these sources.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.173. ADDITIONAL SECURITY FOR BONDS AND NOTES. (a) The bonds and notes may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds and notes.

(b) The trust indenture, regardless of the existence of the deed trust or mortgage lien on the properties, may contain provisions established by the board for the security of the bonds and notes and the preservation of the trust estate, may make provisions for amendment or modification, and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed trust or mortgage lien shall be absolute owner of the properties and rights purchased and may maintain and operate them.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.174. FORM OF BONDS OR NOTES. (a) A district may issue its bonds or notes in various series or issues.

(b) Bonds or notes may mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate permitted by the constitution and laws of this state.

(c) A district's bonds, notes, and interest coupons, if any,

are investment securities under the terms of Chapter 8, Business & Commerce Code, and may be issued registrable as to principal or as to both principal and interest and may be made redeemable before maturity, at the option of the district, or may contain a mandatory redemption provision.

(d) A district's bonds and notes may be issued in the form, denominations, and manner and under the terms, conditions, and details, and shall be signed and executed as provided by the board in the resolution or order authorizing their issuance.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.175. PROVISIONS OF BONDS AND NOTES. (a) In the orders or resolutions authorizing the issuance of bonds or notes, including refunding bonds, the board may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds. The board may make additional covenants with respect to bonds or notes, pledged revenues, and the operation and maintenance of those works, improvements, and facilities, of which the revenue is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds or notes may also prohibit the further issuance of bonds, notes, or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds or notes 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 or notes being issued.

(c) The orders or resolutions of the board issuing bonds or notes may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceeding or instruments necessary and convenient in the issuance of bonds or notes.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.176. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds or notes, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of the state.

(c) Refunding bonds may be payable from the same source as the bonds or notes being refunded or from other additional sources.

(d) The refunding bonds must be approved by the attorney general as in the case of other bonds or notes and shall be registered by the comptroller on the surrender and cancellation of the bonds or notes being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds or notes being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds or notes being refunded. If refunding bonds are issued before cancellation of the other bonds or notes, an amount sufficient to pay the principal of and interest on the bonds or notes being refunded to their maturity dates, or to their option dates if the bonds or notes have been duly called for payment prior to maturity according to their terms, shall be deposited in the place or places at which the bonds or notes being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds or notes being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of the state.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.177. BONDS AND NOTES AS INVESTMENTS. District bonds and notes are legal and authorized investments for:

(1) banks;

(2) savings banks;

(3) trust companies;

(4) savings and loan associations;

(5) insurance companies;

(6) fiduciaries;
(7) trustees;
(8) guardians; and
(9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.178. BONDS AND NOTES AS SECURITY FOR DEPOSITS. District bonds and notes 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 or notes are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.179. TAX STATUS OF BONDS AND NOTES. Since a district governed by this chapter is a public entity performing an essential public function, bonds and notes issued by the district, any transaction relating to the bonds and notes, and profits made in the sale of the bonds and notes, are free from taxation by the state or by any city, county, special district, or other political subdivision of the state.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.180. ELECTION. (a) Bonds or notes secured in whole or in part by taxes may not be issued by the district until authorized by a majority vote of the qualified voters of the district at an election called for that purpose.

(b) The board may order an election, and the order calling the election shall state the nature and the date of the election, the hours during which the polls will be open, the location of the polling places, the amount of bonds or notes to be authorized, and the maximum maturity of the bonds or notes.

(c) At an election to authorize bonds or notes payable wholly

from ad valorem taxes, the ballots must be printed to provide for voting for or against the proposition: "The issuance of (bonds or notes) and the levy of taxes for payment of the (bonds or notes)." At any election to authorize bonds or notes payable from both ad valorem taxes and revenues, the ballots must be printed to provide for voting for or against: "The issuance of (bonds or notes) and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the (bonds or notes)."

(d) The board shall canvass the returns and declare the results of the election. If a majority of the votes cast at the election favor the issuance of the bonds or notes, the bonds or notes may be issued by the board, but if a majority of the votes cast at the election do not favor issuance of the bonds or notes, the bonds or notes may not be issued.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.181. APPROVAL BY ATTORNEY GENERAL; REGISTRATION BY COMPTROLLER. (a) Bonds and notes issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds or notes have been authorized in accordance with law, the attorney general shall approve them, and they shall be registered by the comptroller.

(c) After the approval and registration of bonds or notes, the bonds or notes are incontestable in any court or other forum, for any reason, and are valid and binding obligations in accordance with their terms for all purposes.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER G. DISTRICT REVENUES

Sec. 36.201. LEVY OF TAXES. (a) The board may annually levy taxes to pay the bonds issued by the district that are payable in whole or in part by taxes.

(b) The board may annually levy taxes to pay the maintenance and operating expenses of the district at a rate not to exceed 50 cents on each $100 of assessed valuation.

(c) The board may not levy a tax to pay the maintenance and operating expenses of the district under this section until the tax

is approved by a majority of the electors voting at an election in the district held for that purpose. The district may:

(1) hold an election for approval of the tax at the same time and in conjunction with an election to authorize bonds, following the procedures applicable to a bond election; or

(2) hold a separate election for approval of the tax in accordance with Subsection (d).

(d) An order calling a separate election for approval of a tax under this section must be issued at least 15 days before the date of the election, and the election notice must be published at least twice in a newspaper of general circulation in the district. The first publication of the notice must be at least 14 days before the date of the election.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.202. BOARD AUTHORITY. (a) The board may levy taxes for the entire year in which the district is created.

(b) If territory is added to or annexed by the district, the board may levy taxes in the new territory for the entire year in which the territory is added or annexed.

(c) The board shall levy taxes on all property in the district subject to district taxation.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.203. TAX RATE. In setting the tax rate, the board shall take into consideration the income of the district from sources other than taxation. On determination of the amount of tax required to be levied, the board shall make the levy and certify it to the tax assessor-collector.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.204. TAX APPRAISAL, ASSESSMENT AND COLLECTION. (a) The Tax Code governs the appraisal, assessment, and collection of district taxes.

(b) The board may provide for the appointment of a tax

assessor-collector for the district or may contract for the assessment and collection of taxes as provided by the Tax Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.205. AUTHORITY TO SET FEES. (a) A district may set fees for administrative acts of the district, such as filing applications. Fees set by a district may not unreasonably exceed the cost to the district of performing the administrative function for which the fee is charged.

(b) A district shall set and collect fees for all services provided outside the boundaries of the district. The fees may not unreasonably exceed the cost to the district of providing the services outside the district.

(c) A district may assess production fees based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn. A district may assess the fees in lieu of, or in conjunction with, any taxes otherwise levied by the district. A district may use revenues generated by the fees for any lawful purpose. Production fees shall not exceed:

(1) $1 per acre-foot payable annually for water used for agricultural use; or

(2) $10 per acre-foot payable annually for water used for any other purpose.

(d) The Lone Star Groundwater Conservation District and the Guadalupe County Groundwater Conservation District may not charge production fees for an annual period greater than $1 per acre-foot for water used for agricultural use or 17 cents per thousand gallons for water used for any other purpose. This subsection shall take precedence over all prior enactments.

(e) Subsection (c) does not apply to the following districts:

(1) the Fort Bend Subsidence District;

(2) the Harris-Galveston Subsidence District;

(3) the Barton Springs-Edwards Aquifer Conservation District; or

(4) any district that collects a property tax and that was created before September 1, 1999, unless otherwise authorized by special law.

(f) A district, including a district described under Subsection

(d), may assess a production fee under Subsection (c) and an export fee under Subsection (g), if applicable, for any water produced under an exemption under Section 36.117 if that water is subsequently sold to another person.

(g) A district may assess an export fee under Section 36.122.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.53, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1405 (S.B. 747), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 21.003, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 12, eff. June 10, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1135 (H.B. 2729), Sec. 14, eff. September 1, 2019.

Sec. 36.206. DISTRICT FEES. (a) A temporary board may set fees authorized by this chapter to pay for the creation and initial operation of a district, until such time as the district creation has been confirmed and a permanent board has been elected by a majority vote of the qualified voters voting in the district in an election called for those purposes.

(b) The rate of fees set for agricultural uses shall be no more than 20 percent of the rate applied to municipal uses.

(c) District fees may not be used to purchase groundwater rights unless the purchased rights are acquired for conservation purposes and are permanently held in trust not to be produced.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.35, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.54, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 13, eff. June 10, 2015.

Sec. 36.207. USE OF FEES. A district may use funds obtained

from administrative, production, or export fees collected under a special law governing the district or this chapter for any purpose consistent with the district's approved management plan, including, without limitation, making grants, loans, or contractual payments to achieve, facilitate, or expedite reductions in groundwater pumping or the development or distribution of alternative water supplies.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.35, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 17 (S.B. 727), Sec. 7, eff. April 29, 2011.
Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 14, eff. June 10, 2015.

SUBCHAPTER H. JUDICIAL REVIEW

Sec. 36.251. SUIT AGAINST DISTRICT. (a) A person, firm, corporation, or association of persons affected by and dissatisfied with any rule or order made by a district, including an appeal of a decision on a permit application, is entitled to file a suit against the district or its directors to challenge the validity of the law, rule, or order.

(b) Only the district, the applicant, and parties to a contested case hearing may participate in an appeal of a decision on the application that was the subject of that contested case hearing. An appeal of a decision on a permit application must include the applicant as a necessary party.

(c) The suit shall be filed in a court of competent jurisdiction in any county in which the district or any part of the district is located. The suit may only be filed after all administrative appeals to the district are final.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 15, eff. June 10, 2015.

Sec. 36.252. SUIT TO BE EXPEDITED. A suit brought under this subchapter shall be advanced for trial and determined as

expeditiously as possible. No postponement or continuance shall be granted except for reasons considered imperative by the court.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.253. TRIAL OF SUIT. The burden of proof is on the petitioner, and the challenged law, rule, order, or act shall be deemed prima facie valid. The review on appeal is governed by the substantial evidence rule as defined by Section 2001.174, Government Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.254. SUBCHAPTER CUMULATIVE. The provisions of this subchapter do not affect other legal or equitable remedies that may be available.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER I. PERFORMANCE REVIEW AND DISSOLUTION

Sec. 36.301. FAILURE TO SUBMIT A MANAGEMENT PLAN. If a district fails to submit a management plan or to receive approval of its management plan under Section 36.1072, or fails to submit or receive approval of an amendment to the management plan under Section 36.1073, the commission shall take appropriate action under Section 36.303.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 17 (S.B. 727), Sec. 8, eff. April 29, 2011.

Sec. 36.3011. COMMISSION INQUIRY AND ACTION REGARDING DISTRICT DUTIES. (a) In this section, "affected person" means, with respect to a management area:

(1) an owner of land in the management area;

(2) a groundwater conservation district or subsidence district in or adjacent to the management area;

(3) a regional water planning group with a water management strategy in the management area;

(4) a person who holds or is applying for a permit from a district in the management area;

(5) a person with a legally defined interest in groundwater in the management area; or

(6) any other person defined as affected by commission rule.

(b) An affected person may file a petition with the commission requesting an inquiry for any of the following reasons:

(1) a district fails to submit its management plan to the executive administrator;

(2) a district fails to participate in the joint planning process under Section 36.108;

(3) a district fails to adopt rules;

(4) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;

(5) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;

(6) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;

(7) the rules adopted by a district are not designed to achieve the adopted desired future conditions;

(8) the groundwater in the management area is not adequately protected by the rules adopted by a district; or

(9) the groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

(c) Not later than the 90th day after the date the petition is filed, the commission shall review the petition and either:

(1) dismiss the petition if the commission finds that the evidence is not adequate to show that any of the conditions alleged in the petition exist; or

(2) select a review panel as provided in Subsection (d).

(d) If the petition is not dismissed under Subsection (c), the

commission shall appoint a review panel consisting of a chairperson and four other members. A director or general manager of a district located outside the management area that is the subject of the petition may be appointed to the review panel. The commission may not appoint more than two members of the review panel from any one district. The commission also shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the panel.

(e) Not later than the 120th day after appointment, the review panel shall review the petition and any evidence relevant to the petition and, in a public meeting, consider and adopt a report to be submitted to the commission. The commission may direct the review panel to conduct public hearings at a location in the management area to take evidence on the petition. The review panel may attempt to negotiate a settlement or resolve the dispute by any lawful means.

(f) In its report, the review panel shall include:

(1) a summary of all evidence taken in any hearing on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take and the reasons it finds those actions appropriate; and

(3) any other information the panel considers appropriate.

(g) The review panel shall submit its report to the commission.

(h) Not later than the 45th day after receiving the review panel's report under this section, the executive director or the commission shall take action to implement any or all of the panel's recommendations. The commission may take any action against a district it considers necessary in accordance with Section 36.303 if the commission finds that:

(1) the district has failed to submit its management plan to the executive administrator;

(2) the district has failed to participate in the joint planning process under Section 36.108;

(3) the district has failed to adopt rules;

(4) the district has failed to adopt the applicable desired future conditions adopted by the management area at a joint meeting;

(5) the district has failed to update its management plan

before the second anniversary of the adoption of desired future conditions by the management area;

(6) the district has failed to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;

(7) the rules adopted by the district are not designed to achieve the desired future conditions adopted by the management area during the joint planning process;

(8) the groundwater in the management area is not adequately protected by the rules adopted by the district; or

(9) the groundwater in the management area is not adequately protected because of the district's failure to enforce substantial compliance with its rules.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 2.55, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 13, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 17 (S.B. 727), Sec. 9, eff. April 29, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 18, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 16, eff. June 10, 2015.

Sec. 36.302. LEGISLATIVE AUDIT REVIEW; DETERMINATION OF WHETHER DISTRICT IS OPERATIONAL. (a) A district is subject to review by the state auditor under the direction of the legislative audit committee pursuant to Chapter 321, Government Code.

(b) The commission, the Texas Water Development Board, and the Parks and Wildlife Department shall provide technical assistance to the state auditor's office for a review performed under Subsection (a).

(c) In a review performed under Subsection (a), the state auditor shall make a determination of whether a district is actively engaged in achieving the objectives of the district's management plan based on an analysis of the district's activities.

(d) The state auditor may perform the review under Subsection (a) following the first anniversary of the initial approval of the plan under Section 36.1072 and at least as often as once every seven years after that date, subject to a risk assessment and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code.

(e) The state auditor shall report findings of the review to the legislative audit committee and to the commission.

(f) If it is determined under Subsection (c) that the district is not operational, the commission shall take appropriate action under Section 36.303.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 53, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 14, eff. September 1, 2005.

Sec. 36.303. ACTION BY COMMISSION. (a) If Section 36.301, 36.3011, or 36.302(f) applies, the commission, after notice and hearing in accordance with Chapter 2001, Government Code, shall take action the commission considers appropriate, including:

(1) issuing an order requiring the district to take certain actions or to refrain from taking certain actions;

(2) dissolving the board in accordance with Sections 36.305 and 36.307 and calling an election for the purpose of electing a new board;

(3) requesting the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of the groundwater conservation district; or

(4) dissolving the district in accordance with Sections 36.304, 36.305, and 36.308.

(b) In addition to actions identified under Subsection (a), the commission may recommend to the legislature, based upon the report required by Section 35.018, actions the commission deems necessary to accomplish comprehensive management in the district.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.56, eff.

Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 17, eff. June 10, 2015.

Sec. 36.3035. APPOINTMENT OF A RECEIVER. (a) If the attorney general brings a suit for the appointment of a receiver for a district, a district court shall appoint a receiver if an appointment is necessary to protect the assets of the district.

(b) The receiver shall execute a bond in an amount to be set by the court to ensure the proper performance of the receiver's duties.

(c) After appointment and execution of bond, the receiver shall take possession of the assets of the district specified by the court.

(d) Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the district and shall strictly observe the final order involved.

(e) On a showing of good cause by the district, the court may dissolve the receivership and order the assets and control of the business returned to the district.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 2.57, eff. Sept. 1, 2001.

Sec. 36.304. DISSOLUTION OF DISTRICT. (a) The commission may dissolve a district that has no outstanding bonded indebtedness.

(b) A district composed of territory entirely within one county may be dissolved even if the district has outstanding indebtedness that matures after the year in which the district is dissolved, whereupon the commissioners court shall levy and collect taxes on all taxable property in the district in an amount sufficient to pay the principal of and interest on the indebtedness when due. The taxes shall be levied and collected in the same manner as county taxes.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from Water Code Sec. 36.301 and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 15, eff.

September 1, 2005.

Sec. 36.305. NOTICE OF HEARING FOR DISSOLUTION OF BOARD OR DISTRICT. (a) The commission shall give notice of the hearing for dissolution of a district or of a board which briefly describes the reasons for the proceeding.

(b) The notice shall be published once each week for two consecutive weeks before the day of hearing in a newspaper having general circulation in the county or counties in which the district is located. The first publication shall be 30 days before the day of the hearing.

(c) The commission shall give notice of the hearing by first class mail addressed to the directors of the district according to the last record on file with the executive director.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from Water Code Sec. 36.302 and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

Sec. 36.306. INVESTIGATION. The executive director shall investigate the facts and circumstances of any violations of any rule or order of the commission or any provisions of this chapter and shall prepare and file a written report with the commission and district and include any actions the executive director believes the commission should take under Section 36.303.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from Water Code Sec. 36.303 and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

Sec. 36.307. ORDER OF DISSOLUTION OF BOARD. If the commission enters an order to dissolve the board, the commission shall notify the county commissioners court of each county which contains territory in the district and the commission shall provide that temporary directors be appointed under Section 36.016 to serve until an election for a new board can be held under Section 36.017, provided, however, that district confirmation shall not be required for continued existence of the district and shall not be an issue in

the election.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

Sec. 36.308. CERTIFIED COPY OF ORDER. The commission shall file a certified copy of the order of dissolution of the district in the deed records of the county or counties in which the district is located. If the district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the secretary of state.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from Water Code Sec. 36.305 by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

Sec. 36.309. APPEALS. Appeals from any commission order shall be filed and heard in the district court of any of the counties in which the land is located.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from Water Code Sec. 36.306 and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

Sec. 36.310. ASSETS ESCHEAT. Upon the dissolution of a district by the commission, all assets of the district shall be sold at public auction and the proceeds given to the county if it is a single-county district. If it is a multicounty district, the proceeds shall be divided with the counties in proportion to the surface land area in each county served by the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 20.10, eff. Sept. 1, 1997. Renumbered from Water Code Sec. 36.307 and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

SUBCHAPTER J. ADDING TERRITORY TO DISTRICT

Sec. 36.321. ADDING LAND BY PETITION OF LANDOWNER. Subject to Section 36.331, the owner of land not already in a district may file with the board a notarized petition requesting that the owner's land be included in the district. The petition must describe the land by legal description or by metes and bounds or by lot and block number if there is a recorded plat of the area to be included in the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 18, eff. June 10, 2015.

Sec. 36.322. ASSUMPTION OF BONDS. If the district has bonds, notes, or other obligations outstanding or bonds payable in whole or in part from taxation that have been voted but are unissued, the petitioner shall assume its share of the outstanding bonds, notes, or other obligations and any voted but unissued tax bonds of the district, and the property shall be assessed an ad valorem tax at the same rate as that set for the existing district to pay for outstanding bonds and for the maintenance and operation of the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.323. HEARING AND DETERMINATION OF PETITION. (a) The board shall hear and consider the petition and may add to the district the land described in the petition if it is considered to be to the advantage of the petitioner and to the existing district.

(b) If the district has bonds payable in whole or in part from taxation that are voted but unissued at the time of the annexation, the board may issue the voted but unissued bonds even though the boundaries of the district have been altered since the authorization of the bonds.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.324. RECORDING PETITION. A petition that is granted

which adds land to the district shall be recorded in the office of the county clerk of the county or counties in which the land is located and the county or counties in which the existing district's principal office is located.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.325. ADDING CERTAIN TERRITORY BY PETITION. (a) Landowners of a defined area of territory not already in a district may file with any district a petition requesting inclusion in that district and, subject to Section 36.331, the defined area of territory is not required to be contiguous with that district.

(b) The petition must be signed by:

(1) a majority of the landowners in the territory;

(2) at least 50 landowners if the number of landowners is more than 50; or

(3) the commissioners court of the county in which the area is located if the area is identified as a priority groundwater management area or includes the entire county.

(c) The petition must describe the land by legal description or by metes and bounds or by lot and block number if there is a recorded plat of the area to be included in the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.37, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 19, eff. June 10, 2015.

Sec. 36.326. HEARING ON PETITION. The board by order shall set the time and place of separate hearings on the petition to include the territory in the district. At least one hearing shall be held in the existing district and one hearing shall be held in the territory to be added.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.327. RESOLUTION TO ADD TERRITORY. If the board finds after the hearing on the petition that the addition of the land would benefit the district and the territory to be added, it may add the territory to the district by resolution. The board does not have to include all the territory described in the petition if it finds that a modification or change is necessary or desirable.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.328. ELECTION TO RATIFY ANNEXATION OF LAND. (a) Annexation of the territory by petition filed under Section 36.325 is not final until ratified by a majority vote of the voters in the territory to be added. An election in the existing district accepting the addition of land is not required.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "The inclusion of (briefly describe additional area) in the _____ District." If the district levies a property tax for payment of its maintenance and operating expenses, the proposition shall include the following language: "and the levy of a tax on property at a rate not to exceed _____ cents on each $100 of assessed valuation for payment of maintenance and operating expenses of the district."

(c) The amount of the tax included in the proposition shall be the maximum amount that the district is authorized to levy. If the district has outstanding or authorized bonded indebtedness, the proposition shall include language providing for the assumption by the additional area of a proportional share of the bonded indebtedness of the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 20, eff. June 10, 2015.

Sec. 36.329. NOTICE AND PROCEDURE OF ELECTION. The notice of the election, the manner and the time of giving the notice, the manner of holding the election, and qualifications of the voters are governed by the Election Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.330. LIABILITY OF ADDED TERRITORY. The added territory shall bear its pro rata share of indebtedness or taxes that may be owed, contracted, or authorized by the district to which it is added.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.331. ANNEXATION OF NONCONTIGUOUS TERRITORY. Land not contiguous to the existing boundaries of a district may not be added to or annexed to a district unless the land is located either within the same management area, priority groundwater management area, or a groundwater subdivision designated by the commission or its predecessors.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.38, eff. Sept. 1, 1997.

SUBCHAPTER K. CONSOLIDATION OF DISTRICTS

Sec. 36.351. CONSOLIDATION OF DISTRICTS. (a) Two or more districts may consolidate into one district. To initiate a consolidation, the board of a district shall adopt a resolution proposing a consolidation and deliver a copy of the resolution to the board of each district with which consolidation is proposed.

(b) Adjacent districts may consolidate portions of either district if one district relinquishes land within that district to the jurisdiction of the other district.

(c) A consolidation under this subchapter occurs if the board of each involved district adopts a resolution containing the terms and conditions of the consolidation.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1025, Sec. 1, eff. June 18, 1999.

Sec. 36.352. TERMS AND CONDITIONS OF CONSOLIDATION. (a) The

terms and conditions for consolidation shall include:

(1) adoption of a name for the district;

(2) the number and apportionment of directors to serve on the board;

(3) the effective date of the consolidation;

(4) an agreement on finances for the consolidated district, including disposition of funds, property, and other assets of each district;

(5) transfer of all permits issued in the area that is the subject of the consolidation to the consolidated district; and

(6) an agreement on governing the districts during the transition period, including selection of officers.

(b) The terms and conditions for consolidation may include:

(1) assumption by each district of the other district's bonds, notes, voted but unissued bonds, or other obligations;

(2) an agreement to levy taxes to pay for bonds;

(3) any other terms of conditions agreed upon by the board of each district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.353. NOTICE AND HEARING ON CONSOLIDATION. (a) Each board shall publish notice and hold a public hearing within that district on the terms and conditions for consolidation of the districts.

(b) After the hearing, the board may, by resolution, approve the terms and conditions for consolidation and enter an order consolidating the districts.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.354. ELECTIONS TO APPROVE CONSOLIDATION. (a) An election to ratify the consolidation is required in each district that initiates consolidation. An election is not required in a district that does not initiate consolidation.

(b) The board of each district that is required by Subsection (a) to conduct an election shall order an election in the district only after the board of each district to be consolidated has agreed on the terms and conditions of consolidation. The directors of each

district conducting an election shall order the election to be held on the same day in each district. The election shall be held and notice given in the manner provided by the Election Code.

(c) The ballots for the election shall be printed to provide for voting for or against the proposition: "The consolidation of (names of the districts to be consolidated) in the _____ District." If the district levies a property tax for payment of its bonded indebtedness, the proposition shall include the following language: "and the levy of a tax on property at a rate not to exceed _____ cents on each $100 of assessed valuation for payment of bonds." If the district levies a property tax for payment of its maintenance and operating expenses, the proposition shall include the following language: "and the levy of a tax on property at a rate not to exceed _____ cents on each $100 of assessed valuation for payment of maintenance and operating expenses of the district."

(d) A district may be consolidated only if a majority of the electors in each district required by Subsection (a) to conduct an election vote in favor of the consolidation. If more than two districts are consolidating, failure of any one district to ratify the consolidation shall not prevent the consolidation of the other districts.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 1025, Sec. 2, eff. June 18, 1999.

Sec. 36.355. GOVERNING CONSOLIDATED DISTRICTS. (a) After two or more districts are consolidated, they become one district and are governed as one district.

(b) During the transition period, the officers of each district shall continue to act jointly as officers of the original districts to settle the affairs of their respective districts.

(c) If the consolidated district elects directors, directors for the consolidated district shall be elected in the same manner and for the same term as directors elected at a confirmation election. The directors' election shall be set for the next regular election.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.356. DEBTS OF ORIGINAL DISTRICTS. (a) After two or more districts are consolidated, the consolidated district shall protect the debts of the original districts and shall assure that the debts are not impaired. If the consolidated district has taxing authority, the debts may be paid by taxes levied on the land in the original districts as if they had not consolidated or from contributions from the consolidated district on terms stated in the consolidation agreement.

(b) If the consolidated district has taxing authority and assumes the bonds, notes, and other obligations of the original districts, taxes may be levied uniformly on all taxable property within the consolidated district to pay the debts.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.357. ASSESSMENT AND COLLECTION OF TAXES. If the consolidated district has taxing authority, the district shall assess and collect taxes on property on all property in the district for maintenance and operation of the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.358. VOTED BUT UNISSUED BONDS. If either district has voted but unissued bonds payable in whole or in part from taxation assumed by the consolidated district, the consolidated district may issue the voted but unissued bonds in the name of the consolidated district and levy a uniform tax on all taxable property in the consolidated district to pay for the bonds.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.359. FILING OF ORDER WITH COUNTY CLERK AND EXECUTIVE DIRECTOR. A consolidation order issued by the board shall be kept in the records of the consolidated district, recorded in the office of the county clerk in each of the counties in the consolidated district, and filed with the executive director.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER L. GROUNDWATER CONSERVATION DISTRICT LOAN ASSISTANCE FUND

Sec. 36.3705. DEFINITION. In this subchapter, "applicant" means a newly confirmed district applying for a loan from the loan fund.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 16, eff. September 1, 2005.

Sec. 36.371. GROUNDWATER CONSERVATION DISTRICT LOAN ASSISTANCE FUND. (a) The groundwater conservation district loan assistance fund is created, to be funded by direct appropriation and by the Texas Water Development Board from the water assistance fund.

(b) Repayments of loans shall be deposited in the water assistance fund.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.39, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 22, eff. June 10, 2015.

Sec. 36.372. FINANCIAL ASSISTANCE. (a) The loan fund may be used by the Texas Water Development Board to provide loans to newly confirmed districts and legislatively created districts that do not require a confirmation election to pay for their creation and initial operations.

(b) The Texas Water Development Board shall establish rules for the use and administration of the loan fund.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.39, eff. Sept. 1, 1997.

Sec. 36.373. APPLICATION FOR ASSISTANCE. (a) In an application to the Texas Water Development Board for financial assistance from the loan fund, the applicant shall include:

(1) the name of the district and its board members;

(2) a citation of the law under which the district operates and was created;

(3) a description of the initial operations;

(4) the total start-up cost of the initial operations;

(5) the amount of state financial assistance requested;

(6) the plan for repaying the total cost of the loan; and

(7) any other information the Texas Water Development Board may require to perform its duties and protect the public interest.

(b) The Texas Water Development Board may not accept an application for a loan from the loan fund unless it is submitted in affidavit form by the applicant's board. The Texas Water Development Board shall prescribe the affidavit form in its rules.

(c) The rules implementing this section shall not restrict or prohibit the Texas Water Development Board from requiring additional factual material from an applicant.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.39, eff. Sept. 1, 1997.

Sec. 36.374. APPROVAL OF APPLICATION. The Texas Water Development Board, by resolution, may approve an application if it finds that:

(1) granting financial assistance to the applicant will serve the public interest; and

(2) the revenue pledged by the applicant from district taxes and fees and other sources will be sufficient to meet all the obligations assumed by the applicant.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.39, eff. Sept. 1, 1997.

SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS; NOTICE AND HEARING PROCESS

Sec. 36.401. DEFINITION. In this subchapter, "applicant" means a person who is applying for a permit or a permit amendment.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.

Sec. 36.402. APPLICABILITY. Except as provided by Section 36.416, this subchapter applies to the notice and hearing process used by a district for permit and permit amendment applications for which a hearing is required.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 308 (S.B. 854), Sec. 5, eff. September 1, 2015.

Sec. 36.403. SCHEDULING OF PUBLIC HEARING. (a) The general manager or board may schedule a public hearing on permit or permit amendment applications received by the district as necessary, as provided by Section 36.114.

(b) The general manager or board may schedule more than one application for consideration at a public hearing.

(c) A public hearing must be held at the district office or regular meeting location of the board unless the board provides for hearings to be held at a different location.

(d) A public hearing may be held in conjunction with a regularly scheduled board meeting.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 405 (H.B. 2179), Sec. 1, eff. June 10, 2015.

Sec. 36.404. NOTICE. (a) If the general manager or board schedules a public hearing on an application for a permit or permit amendment, the general manager or board shall give notice of the hearing as provided by this section.

(b) The notice must include:

(1) the name of the applicant;

(2) the address or approximate location of the well or proposed well;

(3) a brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose

of the proposed use, and any change in use;

(4) the time, date, and location of the hearing; and

(5) any other information the general manager or board considers relevant and appropriate.

(c) Not later than the 10th day before the date of a hearing, the general manager or board shall:

(1) post notice in a place readily accessible to the public at the district office;

(2) provide notice to the county clerk of each county in the district; and

(3) provide notice by:

(A) regular mail to the applicant;

(B) regular mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d); and

(C) regular mail to any other person entitled to receive notice under the rules of the district.

(d) A person may request notice from the district of a public hearing on a permit or a permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the district. To receive notice of a public hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.

(e) Failure to provide notice under Subsection (c)(3)(B) does not invalidate an action taken by the district at the hearing.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 405 (H.B. 2179), Sec. 2, eff. June 10, 2015.

Sec. 36.405. HEARING REGISTRATION. The district may require each person who participates in a public hearing to submit a hearing registration form stating:

(1) the person's name;

(2) the person's address; and

(3) whom the person represents, if the person is not there in the person's individual capacity.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 405 (H.B. 2179), Sec. 3, eff. June 10, 2015.

Sec. 36.4051. BOARD ACTION; CONTESTED CASE HEARING REQUESTS; PRELIMINARY HEARING. (a) The board may take action on any uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The board may issue a written order to:

(1) grant the application;

(2) grant the application with special conditions; or

(3) deny the application.

(b) The board shall schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance with rules adopted under Section 36.415. The preliminary hearing may be conducted by:

(1) a quorum of the board;

(2) an individual to whom the board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or

(3) the State Office of Administrative Hearings under Section 36.416.

(c) Following a preliminary hearing, the board shall determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised. If the board determines that no person who requested a contested case hearing had standing or that no justiciable issues were raised, the board may take any action authorized under Subsection (a).

(d) An applicant may, not later than the 20th day after the date the board issues an order granting the application, demand a contested case hearing if the order:

(1) includes special conditions that were not part of the application as finally submitted; or

(2) grants a maximum amount of groundwater production that is less than the amount requested in the application.

Added by Acts 2015, 84th Leg., R.S., Ch. 405 (H.B. 2179), Sec. 4, eff. June 10, 2015.

Sec. 36.406. HEARING PROCEDURES. (a) A hearing must be conducted by:

(1) a quorum of the board;

(2) an individual to whom the board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing; or

(3) the State Office of Administrative Hearings under Section 36.416.

(b) Except as provided by Subsection (c) or Section 36.416, the board president or the hearings examiner shall serve as the presiding officer at the hearing.

(c) If the hearing is conducted by a quorum of the board and the board president is not present, the directors conducting the hearing may select a director to serve as the presiding officer.

(d) The presiding officer may:

(1) convene the hearing at the time and place specified in the notice;

(2) set any necessary additional hearing dates;

(3) designate the parties regarding a contested application;

(4) establish the order for presentation of evidence;

(5) administer oaths to all persons presenting testimony;

(6) examine persons presenting testimony;

(7) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;

(8) prescribe reasonable time limits for testimony and the presentation of evidence;

(9) exercise the procedural rules adopted under Section 36.415; and

(10) determine how to apportion among the parties the costs related to:

(A) a contract for the services of a presiding officer;

and

(B) the preparation of the official hearing record.

(e) Except as provided by a rule adopted under Section 36.415, a district may allow any person, including the general manager or a district employee, to provide comments at a hearing on an uncontested application.

(f) The presiding officer may allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.

(g) If the board has not acted on the application, the presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the presiding officer not later than the 10th day after the date of the hearing. A person who files additional written material with the presiding officer under this subsection must also provide the material, not later than the 10th day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested hearing. A person who receives additional written material under this subsection may file a response to the material with the presiding officer not later than the 10th day after the date the material was received.

(h) The district by rule adopted under Section 36.417 may authorize the presiding officer, at the presiding officer's discretion, to issue an order at any time before board action under Section 36.411 that:

(1) refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing;

(2) determines how the costs of the procedure shall be apportioned among the parties; and

(3) appoints an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 53 (S.B. 693), Sec. 1, eff. May 12, 2011.

Acts 2015, 84th Leg., R.S., Ch. 405 (H.B. 2179), Sec. 5, eff. June 10, 2015.

Sec. 36.407. EVIDENCE. (a) The presiding officer shall admit evidence that is relevant to an issue at the hearing.

(b) The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.

Sec. 36.408. RECORDING. (a) Except as provided by Subsection (b), the presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to a contested hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party.

(b) If a hearing is uncontested, the presiding officer may substitute minutes or the report required under Section 36.410 for a method of recording the hearing provided by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.

Sec. 36.409. CONTINUANCE. The presiding officer may continue a hearing from time to time and from place to place without providing notice under Section 36.404. If the presiding officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the presiding officer must provide

notice of the continued hearing by regular mail to the parties.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.

Sec. 36.410. PROPOSAL FOR DECISION. (a) Except as provided by Subsection (e), the presiding officer shall submit a proposal for decision to the board not later than the 30th day after the date the evidentiary hearing is concluded.

(b) The proposal for decision must include:

(1) a summary of the subject matter of the hearing;

(2) a summary of the evidence or public comments received; and

(3) the presiding officer's recommendations for board action on the subject matter of the hearing.

(c) The presiding officer or general manager shall provide a copy of the proposal for decision to:

(1) the applicant; and

(2) each designated party.

(d) A party may submit to the board written exceptions to the proposal for decision.

(e) If the hearing was conducted by a quorum of the board and if the presiding officer prepared a record of the hearing as provided by Section 36.408(a), the presiding officer shall determine whether to prepare and submit a proposal for decision to the board under this section.

(f) The board shall consider the proposal for decision at a final hearing. Additional evidence may not be presented during a final hearing. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued as provided by Section 36.409.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 405 (H.B. 2179), Sec. 6, eff. June 10, 2015.

Sec. 36.411. BOARD ACTION. The board shall act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.

Sec. 36.412. REQUEST FOR REHEARING OR FINDINGS AND CONCLUSIONS. (a) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the board on a permit or permit amendment application by requesting written findings and conclusions not later than the 20th day after the date of the board's decision.

(b) On receipt of a timely written request, the board shall make written findings and conclusions regarding a decision of the board on a permit or permit amendment application. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each designated party, not later than the 35th day after the date the board receives the request. A party to a contested hearing may request a rehearing not later than the 20th day after the date the board issues the findings and conclusions.

(c) A request for rehearing must be filed in the district office and must state the grounds for the request. If the original hearing was a contested hearing, the party requesting a rehearing must provide copies of the request to all parties to the hearing.

(d) If the board grants a request for rehearing, the board shall schedule the rehearing not later than the 45th day after the date the request is granted.

(e) The failure of the board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 405 (H.B. 2179), Sec. 7, eff. June 10, 2015.

Sec. 36.413. DECISION; WHEN FINAL. (a) A decision by the board on a permit or permit amendment application is final:

(1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or

(2) if a request for rehearing is filed on time, on the date:

(A) the board denies the request for rehearing; or

(B) the board renders a written decision after rehearing.

(b) Except as provided by Subsection (c), an applicant or a party to a contested hearing may file a suit against the district under Section 36.251 to appeal a decision on a permit or permit amendment application not later than the 60th day after the date on which the decision becomes final.

(c) An applicant or a party to a contested hearing may not file suit against the district under Section 36.251 if a request for rehearing was not filed on time.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.

Sec. 36.414. CONSOLIDATED HEARING ON APPLICATIONS. (a) Except as provided by Subsection (b), a district shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant if the district requires a separate permit or permit amendment application for:

(1) drilling, equipping, operating, or completing a well or substantially altering the size of a well or well pump under Section 36.113;

(2) the spacing of water wells or the production of groundwater under Section 36.116; or

(3) transferring groundwater out of a district under Section 36.122.

(b) A district is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the board cannot adequately evaluate one application until it has acted on another application.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.

Sec. 36.415. RULES; ADDITIONAL PROCEDURES. (a) A district by rule shall adopt procedural rules to implement this subchapter and may adopt notice and hearing procedures in addition to those provided by this subchapter.

(b) In adopting the rules, a district shall:

(1) define under what circumstances an application is considered contested;

(2) limit participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within a district's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public; and

(3) establish the deadline for a person who may participate under Subdivision (2) to file in the manner required by the district a protest and request for a contested case hearing.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 405 (H.B. 2179), Sec. 8, eff. June 10, 2015.

Sec. 36.416. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS; RULES. (a) If a district contracts with the State Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code. The district may adopt rules for a hearing conducted under this section that are consistent with the procedural rules of the State Office of Administrative Hearings.

(b) If requested by the applicant or other party to a contested case, a district shall contract with the State Office of Administrative Hearings to conduct the hearing. If the district does not prescribe a deadline by rule, the applicant or other party must request the hearing before the State Office of Administrative Hearings not later than the 14th day before the date the evidentiary hearing is scheduled to begin. The hearing must be held in Travis

County or at a location described by Section 36.403(c). The district shall choose the location.

(c) The party requesting the hearing before the State Office of Administrative Hearings shall pay all costs associated with the contract for the hearing and shall deposit with the district an amount sufficient to pay the contract amount before the hearing begins. At the conclusion of the hearing, the district shall refund any excess money to the paying party. All other costs may be assessed as authorized by this chapter or district rules.

(d) An administrative law judge who conducts a contested case hearing shall consider applicable district rules or policies in conducting the hearing, but the district deciding the case may not supervise the administrative law judge.

(e) A district shall provide the administrative law judge with a written statement of applicable rules or policies.

(f) A district may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 53 (S.B. 693), Sec. 2, eff. May 12, 2011.

Acts 2015, 84th Leg., R.S., Ch. 405 (H.B. 2179), Sec. 9, eff. June 10, 2015.

Sec. 36.4165. FINAL DECISION; CONTESTED CASE HEARINGS. (a) In a proceeding for a permit application or amendment in which a district has contracted with the State Office of Administrative Hearings for a contested case hearing, the board has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge.

(b) A board 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, only if the board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, district rules, written policies

provided under Section 36.416(e), or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 53 (S.B. 693), Sec. 3, eff. May 12, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 405 (H.B. 2179), Sec. 10, eff. June 10, 2015.

Sec. 36.417. RULES; ALTERNATIVE DISPUTE RESOLUTION. A district by rule may develop and use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009, Government Code.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.

Sec. 36.418. RULES; CONTESTED CASE HEARINGS; APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT. (a) A district may adopt rules establishing procedures for contested hearings consistent with Subchapters C, D, and F, Chapter 2001, Government Code, including the authority to issue a subpoena, require a deposition, or order other discovery.

(b) Except as provided by this section and Sections 36.416 and 36.4165, Chapter 2001, Government Code, does not apply to a hearing under this subchapter.

(c) The district shall adopt rules to:

(1) establish a procedure for preliminary and evidentiary hearings;

(2) allow the presiding officer, at a preliminary hearing by the district and before a referral of the case to the State Office of Administrative Hearings, to determine a party's right to participate in a hearing according to Section 36.415(b)(2); and

(3) set a deadline for a party to file a request to refer a contested case to the State Office of Administrative Hearings under Section 36.416.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 17, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 53 (S.B. 693), Sec. 4, eff. May 12, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 53 (S.B. 693), Sec. 5, eff. May 12, 2011.

SUBCHAPTER N. AQUIFER STORAGE AND RECOVERY PROJECTS

Sec. 36.451. DEFINITIONS. In this subchapter, "aquifer storage and recovery project," "ASR injection well," "ASR recovery well," and "project operator" have the meanings assigned by Section 27.151.

Added by Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 4, eff. June 16, 2015.

Sec. 36.452. APPLICABILITY TO RECOVERY WELLS THAT ALSO FUNCTION AS INJECTION WELLS. Notwithstanding Section 27.152, this subchapter applies to an ASR recovery well that also functions as an ASR injection well.

Added by Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 4, eff. June 16, 2015.

Sec. 36.453. REGISTRATION AND REPORTING OF WELLS. (a) A project operator shall:

(1) register the ASR injection wells and ASR recovery wells associated with the aquifer storage and recovery project with any district in which the wells are located;

(2) each calendar month by the deadline established by the commission for reporting to the commission, provide the district with a copy of the written or electronic report required to be provided to the commission under Section 27.155; and

(3) annually by the deadline established by the commission for reporting to the commission, provide the district with a copy of the written or electronic report required to be provided to the commission under Section 27.156.

(b) If an aquifer storage and recovery project recovers an

amount of groundwater that exceeds the volume authorized by the commission to be recovered under the project, the project operator shall report to the district the volume of groundwater recovered that exceeds the volume authorized to be recovered in addition to providing the report required by Subsection (a)(2).

Added by Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 4, eff. June 16, 2015.

Sec. 36.454. PERMITTING, SPACING, AND PRODUCTION REQUIREMENTS. (a) Except as provided by Subsection (b), a district may not require a permit for the drilling, equipping, operation, or completion of an ASR injection well or an ASR recovery well that is authorized by the commission.

(b) The ASR recovery wells that are associated with an aquifer storage and recovery project are subject to the permitting, spacing, and production requirements of the district if the amount of groundwater recovered from the wells exceeds the volume authorized by the commission to be recovered under the project. The requirements of the district apply only to the portion of the volume of groundwater recovered from the ASR recovery wells that exceeds the volume authorized by the commission to be recovered.

(c) A project operator may not recover groundwater by an aquifer storage and recovery project in an amount that exceeds the volume authorized by the commission to be recovered under the project unless the project operator complies with the applicable requirements of a district as described by this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 4, eff. June 16, 2015.

Sec. 36.455. FEES AND SURCHARGES. (a) A district may not assess a production fee or a transportation or export fee or surcharge for groundwater recovered from an ASR recovery well, except to the extent that the amount of groundwater recovered under the aquifer storage and recovery project exceeds the volume authorized by the commission to be recovered.

(b) A district may assess a well registration fee or other administrative fee for an ASR recovery well in the same manner that

the district assesses such a fee for other wells registered with the district.

Added by Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 4, eff. June 16, 2015.

Sec. 36.456. DESIRED FUTURE CONDITIONS. A district may consider hydrogeologic conditions related to the injection and recovery of groundwater as part of an aquifer storage and recovery project in the planning for and monitoring of the achievement of a desired future condition for the aquifer in which the wells associated with the project are located.

Added by Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 4, eff. June 16, 2015.

Sec. 36.457. OTHER LAWS NOT AFFECTED. This subchapter does not affect the ability to regulate groundwater as authorized under:

(1) Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, for the Edwards Aquifer Authority;

(2) Chapter 8801, Special District Local Laws Code, for the Harris-Galveston Subsidence District;

(3) Chapter 8834, Special District Local Laws Code, for the Fort Bend Subsidence District;

(4) Chapter 8802, Special District Local Laws Code, for the Barton Springs-Edwards Aquifer Conservation District; or

(5) Chapter 8811, Special District Local Laws Code, for the Corpus Christi Aquifer Storage and Recovery Conservation District.

Added by Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 4, eff. June 16, 2015.

SUBTITLE F. OCCUPATIONAL LICENSING AND REGISTRATION

CHAPTER 37. OCCUPATIONAL LICENSING AND REGISTRATION

Sec. 37.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "License" means an occupational license or class of

license issued by the commission to an individual.

(3) "Registration" means an occupational registration issued by the commission to a person.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001.

Sec. 37.002. RULES. The commission shall adopt any rules necessary to:

(1) establish occupational licenses and registrations prescribed by Sections 26.0301, 26.3573, 26.452, and 26.456 of this code, Sections 341.033, 341.034, 361.027, and 366.071, Health and Safety Code, and Section 1903.251, Occupations Code;

(2) establish classes and terms of occupational licenses and registrations; and

(3) administer the provisions of this chapter and other laws governing occupational licenses and registrations under the commission's jurisdiction.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.848, eff. Sept. 1, 2003.

Sec. 37.003. LICENSE OR REGISTRATION REQUIRED. A person may not engage in a business, occupation, or profession described by Section 26.0301, 26.3573, 26.452, or 26.456 of this code, Section 341.033, 341.034, 361.027, 366.014, or 366.071, Health and Safety Code, or Section 1903.251, Occupations Code, unless the person holds the appropriate license or registration issued by the commission.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.848, eff. Sept. 1, 2003.

Sec. 37.004. QUALIFICATIONS. The commission may establish qualifications for each license and registration issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001.

Sec. 37.005. ISSUANCE AND DENIAL OF LICENSES AND REGISTRATIONS. (a) The commission shall establish requirements and uniform procedures for issuing licenses and registrations under this chapter.

(b) 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 state that has requirements substantially equivalent to those of this state.

(c) After notice and hearing, the commission may deny an application for a license or registration by an applicant who:

(1) has a record in the preceding five years of continuing violations of statutes or rules adopted under those statutes;

(2) has engaged in fraud or deceit in obtaining or applying for a license or registration;

(3) has demonstrated gross negligence, incompetence, or misconduct in the performance of activities authorized by a license or registration;

(4) made an intentional misstatement or misrepresentation of fact in information required to be maintained or submitted to the commission by the license or registration holder;

(5) failed to keep and transmit records as required by a statute within the commission's jurisdiction or a rule adopted under such a statute; or

(6) at the time the application is submitted, is indebted to the state for a fee, penalty, or tax imposed by a statute within the commission's jurisdiction or a rule adopted under such a statute.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001.

Sec. 37.006. RENEWAL OF LICENSE OR REGISTRATION. (a) The commission shall establish requirements and uniform procedures for renewing licenses and registrations.

(b) The commission by rule may adopt a system under which licenses or registrations expire on various dates during the year. For the year in which the license or registration expiration date is changed, the commission shall prorate fees on a monthly basis so that each license or registration holder pays only that portion of the fee

that is allocable to the number of months during which the license or registration is valid. On renewal of the license or registration on the new expiration date, the total renewal fee is payable.

(c) Not later than the 60th 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.

(d) A person may renew an unexpired license or registration by submitting an application accompanied by the required renewal fee.

(e) A person whose license or registration has expired may not engage in activities that require a license or registration until the license or registration is renewed.

(f) A person whose license or registration has been expired for 30 days or less may apply for renewal of the license or registration by paying to the commission a renewal fee in an amount prescribed by commission rule not to exceed 1-1/2 times the normally required renewal fee.

(g) A person whose license or registration has been expired for more than 30 days 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.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001.

Sec. 37.007. LICENSING EXAMINATIONS. (a) The commission shall prescribe the content of licensing examinations. Examinations shall be based on laws, rules, job duties, and standards relating to licenses issued by the commission.

(b) The commission shall determine the location and frequency of examinations.

(c) Not later than the 45th 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.

(d) If requested in writing by a person who fails a licensing examination administered under this chapter, the commission, within a reasonable time, shall provide the person with an analysis of the person's performance on the examination. The commission shall ensure

that an examination analysis does not compromise the fair and impartial administration of future examinations.

(e) The commission shall ensure that an otherwise qualified person with a physical, mental, or developmental disability is provided with a reasonable opportunity to take a licensing examination.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001.

Sec. 37.008. TRAINING; CONTINUING EDUCATION. (a) The commission shall approve training programs necessary to qualify for or renew a license.

(b) The commission shall establish and make available to the public uniform procedures for approving training to qualify for or renew a license.

(c) The commission may recognize, prepare, or administer continuing education programs for license holders, including continuing education programs made available through the Internet.

(d) The commission by rule shall provide a method for a person who holds a license prescribed by Section 26.0301 of this code or Section 341.033 or 341.034, Health and Safety Code, to certify at the time the license is renewed that the license holder has complied with the commission's continuing education requirements.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 149 (H.B. 965), Sec. 1, eff. September 1, 2011.

Sec. 37.009. FEES. (a) The commission shall establish and collect fees to cover the cost of administering and enforcing this chapter and licenses and registrations issued under this chapter.

(b) Fees paid to the commission under this chapter shall be deposited in the state treasury to the credit of the commission occupational licensing account.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001.

Sec. 37.010. ADVERTISING. (a) The commission may not adopt rules restricting advertising or competitive bidding by a license or registration holder 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 restricts:

(1) the use of any medium for advertising;

(2) the use of a license or registration holder's personal appearance or voice in an advertisement;

(3) the use or duration of an advertisement by the license or registration holder; or

(4) the license or registration holder's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001.

Sec. 37.011. COMPLAINTS. The commission shall prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001.

Sec. 37.012. COMPLIANCE INFORMATION. In administering this chapter, the commission may require a person to provide information about other occupational licenses and registrations held by the person, including:

(1) the state in which the license or registration was issued;

(2) the current status of the license or registration; and

(3) whether the license or registration was ever denied, suspended, revoked, surrendered, or withdrawn.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001.

Sec. 37.013. PRACTICE OF OCCUPATION. A license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws

and commission rules and orders.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001.

Sec. 37.014. ROSTER OF LICENSE HOLDERS AND REGISTRANTS. The commission shall maintain and make available to the public an official roster of persons who hold licenses and registrations issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001.

Sec. 37.015. POWER TO CONTRACT. The commission may contract with persons to provide services required by this chapter. The commission may authorize contractors to collect reasonable fees for the services provided.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 1, eff. Sept. 1, 2001.

TITLE 3. RIVER COMPACTS

CHAPTER 41. RIO GRANDE COMPACT

Sec. 41.001. RATIFICATION. The Rio Grande Compact, the text of which is set out in Section 41.009 of this code, was ratified by the legislature of this state in Chapter 3, page 531, Special Laws, Acts of the 46th Legislature, 1939, after having been signed at Santa Fe, New Mexico, on March 18, 1938, by M.C. Hinderlider, commissioner for the State of Colorado, Thos. M. McClure, commissioner for the State of New Mexico, and Frank B. Clayton, commissioner for the State of Texas, and approved by S.O. Harper, commissioner representing the United States.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 41.002. ORIGINAL COPY. An original copy of the compact is on file in the office of the secretary of state.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 41.003. COMMISSIONER. The governor, with the advice and consent of the senate, shall appoint a commissioner to represent this state on the commission established by Article XII of the compact.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 41.004. TERM OF OFFICE. The commissioner holds office for a term of six (6) years and until his successor is appointed and has qualified.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1971, 62nd Leg., p. 2504, ch. 823, Sec. 1, eff. June 8, 1971.

Sec. 41.005. OATH. The commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform his duties as commissioner.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 41.006. COMPENSATION; EXPENSES. The commissioner is entitled to compensation as provided by legislative appropriation. On submission of detailed, sworn accounts, he is entitled to reimbursement for actual expenses incurred while traveling in the discharge of his duties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 41.007. EMPLOYEES; ADMINISTRATIVE EXPENSES. The commissioner, in conjunction with the other members of the commission and as authorized by legislative appropriation, may employ engineering and clerical personnel and may incur necessary office expenses and other expenses incident to the proper performance of his duties and the proper administration of the compact. However, the commissioner shall not incur any financial obligation on behalf of this state until the legislature has authorized and appropriated money for the obligation.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 41.008. POWERS AND DUTIES. The commissioner is responsible for administering the provisions of the compact, and he has all the powers and duties prescribed by the compact.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 41.0081. NOTICE OF COMPACT MEETINGS. For informational purposes, the commissioner shall file with the secretary of state notice of compact meetings for publication in the Texas Register.

Added by Acts 1985, 69th Leg., ch. 609, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.0082. COOPERATION OF TEXAS NATURAL RESOURCE CONSERVATION COMMISSION. The Texas Natural Resource Conservation Commission shall cooperate with the commissioner in the performance of his duties and shall furnish him any available data and information he needs.

Added by Acts 1985, 69th Leg., ch. 609, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 34, eff. June 19, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 11.314, eff. Sept. 1, 1995.

Sec. 41.009. TEXT OF COMPACT. The Rio Grande Compact reads as follows:

RIO GRANDE COMPACT

The State of Colorado, the State of New Mexico, and the State of Texas, desiring to remove all causes of present and future controversy among these States and between citizens of one of these States and citizens of another State with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of interstate comity, and for the purpose of effecting an equitable apportionment of such waters, have resolved to conclude a Compact for the attainment of these purposes, and to that end, through their respective Governors, have named as their respective Commissioners:

For the State of Colorado--M.C. Hinderlider
For the State of New Mexico--Thomas M. McClure
For the State of Texas--Frank B. Clayton
who, after negotiations participated in by S.O. Harper, appointed by the President as the representative of the United States of America, have agreed upon the following Articles, to wit:

Article I

(a) The State of Colorado, the State of New Mexico, the State of Texas, and the United States of America, are hereinafter designated "Colorado," "New Mexico," "Texas," and the "United States," respectively.

(b) "The Commission" means the agency created by this Compact for the administration thereof.

(c) The term "Rio Grande Basin" means all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico, and in Texas above Fort Quitman, including the Closed Basin in Colorado.

(d) The "Closed Basin" means that part of the Rio Grande Basin in Colorado where the streams drain into the San Luis Lakes and adjacent territory, and do not normally contribute to the flow of the Rio Grande.

(e) The term "tributary" means any stream which naturally contributes to the flow of the Rio Grande.

(f) "Transmountain Diversion" is water imported into the drainage basin of the Rio Grande from any stream system outside of the Rio Grande Basin, exclusive of the Closed Basin.

(g) "Annual Debits" are the amounts by which actual deliveries in any calendar year fall below scheduled deliveries.

(h) "Annual Credits" are the amounts by which actual deliveries in any calendar year exceed scheduled deliveries.

(i) "Accrued Debits" are the amounts by which the sum of all annual debits exceeds the sum of all annual credits over any common period of time.

(j) "Accrued Credits" are the amounts by which the sum of all annual credits exceeds the sum of all annual debits over any common period of time.

(k) "Project Storage" is the combined capacity of Elephant Butte Reservoir and all other reservoirs actually available for the storage of usable water below Elephant Butte and above the first diversion to lands of the Rio Grande Project, but not more than a

total of two million, six hundred and thirty-eight thousand, eight hundred and sixty (2,638,860) acre-feet.

(l) "Usable Water" is all water, exclusive of credit water, which is in project storage and which is available for release in accordance with irrigation demands, including deliveries to Mexico.

(m) "Credit Water" is that amount of water in project storage which is equal to the accrued credit of Colorado or New Mexico or both.

(n) "Unfilled Capacity" is the difference between the total physical capacity of project storage and the amount of usable water then in storage.

(o) "Actual Release" is the amount of usable water released in any calendar year from the lowest reservoir comprising project storage.

(p) "Actual Spill" is all water which is actually spilled from Elephant Butte Reservoir, or is released therefrom for flood control, in excess of the current demand on project storage and which does not become usable water by storage in another reservoir; provided, that actual spill of usable water cannot occur until all credit water shall have been spilled.

(q) "Hypothetical Spill" is the time in any year at which usable water would have spilled from project storage if seven hundred and ninety thousand (790,000) acre-feet had been released therefrom at rates proportional to the actual release in every year from the starting date to the end of the year in which hypothetical spill occurs; in computing hypothetical spill the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following the effective date of this Compact, and thereafter the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following each actual spill.

The Commission shall cause to be maintained and operated a stream gaging station equipped with an automatic water stage recorder at each of the following points, to wit:

Article II

(a) On the Rio Grande near Del Norte above the principal points of diversion to the San Luis Valley;

(b) On the Conejos River near Mogote;

(c) On the Los Pinos River near Ortiz;

(d) On the San Antonio River at Ortiz;

(e) On the Conejos River at its mouths near Los Sauces;
(f) On the Rio Grande near Lobatos;
(g) On the Rio Chama below El Vado Reservoir;
(h) On the Rio Grande at Otowi Bridge near San Ildefonso;
(i) On the Rio Grande near San Acacia;
(j) On the Rio Grande at San Marcial;
(k) On the Rio Grande below Elephant Butte Reservoir;
(l) On the Rio Grande below Caballo Reservoir.

Similar gaging stations shall be maintained and operated below any other reservoir constructed after 1929, and at such other points as may be necessary for the securing of records required for the carrying out of the Compact; and automatic water stage recorders shall be maintained and operated on each of the reservoirs mentioned, and on all others constructed after 1929.

Such gaging stations shall be equipped, maintained, and operated by the Commission directly or in cooperation with an appropriate Federal or State agency, and the equipment, method and frequency of measurement at such stations shall be such as to produce reliable records at all times.

Article III

The obligation of Colorado to deliver water in the Rio Grande at the Colorado-New Mexico State Line, measured at or near Lobatos, in each calendar year, shall be ten thousand (10,000) acre-feet less than the sum of those quantities set forth in the two (2) following tabulations of relationship, which correspond to the quantities at the upper index stations:

Discharge of Conejos River
Quantities in thousands of acre-feet

Conejos Index Supply (1)	Conejos River at Mouths (2)
100	0
150	20
200	45
250	75
300	109
350	147
400	188
450	232
500	278
550	326
600	376
650	426

700	476
Intermediate quantities shall be computed by proportional parts.	

(1) Conejos Index Supply is the natural flow of Conejos River at the U.S.G.S. gaging station near Mogote during the calendar year, plus the natural flow of Los Pinos River at the U.S.G.S. gaging station near Ortiz and the natural flow of San Antonio River at the U.S.G.S. gaging station at Ortiz, both during the months of April to October, inclusive.

(2) Conejos River at mouths is the combined discharge of branches of this River at the U.S.G.S. gaging stations near Los Sauces during the calendar year.

Discharge of Rio Grande exclusive of Conejos River

Quantities in thousands of acre-feet

Rio Grande at Del Norte (3)	Rio Grande at Lobatos lessConejos at Mouths (4)
200	60
250	65
300	75
350	86
400	98
450	112
500	127
550	144
600	162
650	182
700	204
750	229
800	257
850	292
900	335
950	380
1,000	430
1,100	540
1,200	640
1,300	740
1,400	840
Intermediate quantities shall be computed by proportional parts.	

(3) Rio Grande at Del Norte is the recorded flow of the Rio Grande at the U.S.G.S. gaging station near Del Norte during the calendar year (measured above all principal points of diversion to San Luis Valley) corrected for the operation of reservoirs constructed after 1937.

(4) Rio Grande at Lobatos less Conejos at mouths is the total flow of the Rio Grande at the U.S.G.S. gaging station near Lobatos, less the discharge of Conejos River at its mouths, during the calendar year.

The application of these schedules shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging station; (b) any new or increased depletion of the runoff above inflow index gaging stations; and (c) any transmountain diversions into the drainage basin of the Rio Grande above Lobatos.

In any event any works are constructed after 1937 for the purpose of delivering water into the Rio Grande from the Closed Basin, Colorado shall not be credited with the amount of such water delivered, unless the proportion of sodium ions shall be less than forty-five (45) percent of the total positive ions in that water when the total dissolved solids in such water exceeds three hundred and fifty (350) parts per million.

Article IV

The obligation of New Mexico to deliver water in the Rio Grande at San Marcial, during each calendar year, exclusive of the months of July, August, and September, shall be that quantity set forth in the following tabulation of relationship, which corresponds to the quantity at the upper index station:

Discharge of Rio Grande at Otowi Bridge and at San Marcial exclusive of July, August, and September

Quantities in thousands of acre-feet

Otowi Index Supply (5)	San Marcial Index Supply (6)
100	0
200	65
300	141
400	219
500	300
600	383
700	469
800	557

900	648
1000	742
1100	839
1200	939
1300	1042
1400	1148
1500	1257
1600	1370
1700	1489
1800	1608
1900	1730
2000	1856
2100	1985
2200	2117
2300	2253
Intermediate quantities shall be computed by proportional parts.	

(5) The Otowi Index Supply is the recorded flow of the Rio Grande at the U.S.G.S. gaging station at Otowi Bridge near San Ildefonso (formerly station near Buckman) during the calendar year, exclusive of the flow during the months of July, August, and September, corrected for the operation of reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and Otowi Bridge.

(6) San Marcial Index Supply is the recorded flow of the Rio Grande at the gaging station at San Marcial during the calendar year exclusive of the flow during the months of July, August, and September.

The application of this schedule shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging stations; (b) depletion after 1929 in New Mexico at any time of the year of the natural runoff at Otowi Bridge; (c) depletion of the runoff during July, August, and September of tributaries between Otowi Bridge and San Marcial, by works constructed after 1937; and (d) any transmountain diversions into the Rio Grande between Lobatos and San Marcial.

Concurrent records shall be kept of the flow of the Rio Grande at San Marcial, near San Acacia, and of the release from Elephant

Butte Reservoir, to the end that the records at these three (3) stations may be correlated.

Article V

If at any time it should be the unanimous finding and determination of the Commission that because of changed physical conditions, or for any other reason, reliable records are not obtainable, or cannot be obtained, at any of the stream gaging stations herein referred to, such stations may, with the unanimous approval of the Commission, be abandoned, and with such approval another station, or other stations, shall be established and new measurements shall be substituted which, in the unanimous opinion of the Commission, will result in substantially the same results, so far as the rights and obligations to deliver water are concerned, as would have existed if such substitution of stations and measurements had not been so made.

Article VI

Commencing with the year following the effective date of this Compact, all credits and debits of Colorado and New Mexico shall be computed for each calendar year; provided, that in a year of actual spill no annual credits nor annual debits shall be computed for that year.

In the case of Colorado, no annual debit nor accrued debit shall exceed one hundred thousand (100,000) acre-feet, except as either or both may be caused by holdover storage water in reservoirs constructed after 1937 in the drainage basin of the Rio Grande above Lobatos. Within the physical limitations of storage capacity in such reservoirs, Colorado shall retain water in storage at all times to the extent of its accrued debit.

In the case of New Mexico, the accrued debit shall not exceed two hundred thousand (200,000) acre-feet at any time, except as such debit may be caused by holdover storage of water in reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and San Marcial. Within the physical limitations of storage capacity in such reservoirs, New Mexico shall retain water in storage at all times to the extent of its accrued debit. In computing the magnitude of accrued credits or debits, New Mexico shall not be charged with any greater debit in any one year than the sum of one hundred and fifty thousand (150,000) acre-feet and all gains in the quantity of water in storage in such year.

The Commission by unanimous action may authorize the release

from storage of any amount of water which is then being held in storage by reason of accrued debits of Colorado or New Mexico; provided, that such water shall be replaced at the first opportunity thereafter.

In computing the amount of accrued credits and accrued debits of Colorado or New Mexico, any annual credits in excess of one hundred and fifty thousand (150,000) acre-feet shall be taken as equal to that amount.

In any year in which actual spill occurs, the accrued credits of Colorado or New Mexico, or both, at the beginning of the year shall be reduced in proportion to their respective credits by the amount of such actual spill; provided, that the amount of actual spill shall be deemed to be increased by the aggregate gain in the amount of water in storage, prior to the time of spill, in reservoirs above San Marcial constructed after 1929; provided, further, that if the Commissioners for the States having accrued credits authorize the release of part, or all, of such credits in advance of spill, the amount so released shall be deemed to constitute actual spill.

In any year in which there is actual spill of usable water, or at the time of hypothetical spill thereof, all accrued debits of Colorado or New Mexico, or both, at the beginning of the year shall be cancelled.

In any year in which the aggregate of accrued debits of Colorado and New Mexico exceeds the minimum unfilled capacity of project storage, such debits shall be reduced proportionally to an aggregate amount equal to such minimum unfilled capacity.

To the extent that accrued credits are impounded in reservoirs between San Marcial and Courchesne, and to the extent that accrued debits are impounded in reservoirs above San Marcial, such credits and debits shall be reduced annually to compensate for evaporation losses in the proportion that such credits or debits bore to the total amount of water in such reservoirs during the year.

Article VII

Neither Colorado nor New Mexico shall increase the amount of water in storage in reservoirs constructed after 1929 whenever there is less than four hundred thousand (400,000) acre-feet of usable water in project storage; provided, that if the actual releases of usable water from the beginning of the calendar year following the effective date of this Compact, or from the beginning of the calendar year following actual spill, have aggregated more than an average of

seven hundred and ninety thousand (790,000) acre-feet per annum, the time at which such minimum stage is reached shall be adjusted to compensate for the difference between the total actual release and releases at such average rate; provided, further, that Colorado or New Mexico, or both, may relinquish accrued credits at any time, and Texas may accept such relinquished water, and in such event the State or States so relinquishing shall be entitled to store water in the amount of the water so relinquished.

Article VIII

During the month of January of any year the Commissioner for Texas may demand of Colorado and New Mexico, and the Commissioner for New Mexico may demand of Colorado, the release of water from storage reservoirs constructed after 1929 to the amount of the accrued debits of Colorado and New Mexico, respectively, and such releases shall be made by each at the greatest rate practicable under the conditions then prevailing, and in proportion to the total debit of each, and in amounts, limited by their accrued debits, sufficient to bring the quantity of usable water in project storage to six hundred thousand (600,000) acre-feet by March 1st and to maintain this quantity in storage until April 30th, to the end that a normal release of seven hundred and ninety thousand (790,000) acre-feet may be made from project storage in that year.

Article IX

Colorado agrees with New Mexico that in event the United States or the State of New Mexico decides to construct the necessary works for diverting the waters of the San Juan River, or any of its tributaries, into the Rio Grande, Colorado hereby consents to the construction of said works and the diversion of waters from the San Juan River, or the tributaries thereof, into the Rio Grande in New Mexico, provided the present and prospective uses of water in Colorado by other diversions from the San Juan River, or its tributaries, are protected.

Article X

In the event water from another drainage basin shall be imported into the Rio Grand Basin by the United States or Colorado or New Mexico, or any of them jointly, the State having the right to the use of such water shall be given proper credit therefor in the application of the schedules.

Article XI

New Mexico and Texas agree that upon the effective date of this

Compact all controversies between said States relative to the quantity or quality of the water of the Rio Grande are composed and settled; however, nothing herein shall be interpreted to prevent recourse by a signatory State to the Supreme Court of the United States for redress should the character or quality of the water, at the point of delivery, be changed hereafter by one signatory State to the injury of another. Nothing herein shall be construed as an admission by any signatory State that the use of water for irrigation causes increase of salinity for which the user is responsible in law.

Article XII

To administer the provisions of this Compact there shall be constituted a Commission composed of one representative from each State, to be known as the Rio Grande Compact Commission. The State Engineer of Colorado shall be ex-officio the Rio Grande Compact Commissioner for Colorado. The State Engineer of New Mexico shall be ex-officio the Rio Grande Compact Commissioner for New Mexico. The Rio Grande Compact Commissioner for Texas shall be appointed by the Governor of Texas. The President of the United States shall be requested to designate a representative of the United States to sit with such Commission, and such Representative of the United States, if so designated by the President, shall act as Chairman of the Commission without vote.

The salaries and personal expenses of the Rio Grande Compact Commissioners for the three (3) States shall be paid by their respective States, and all other expenses incident to the administration of this Compact, not borne by the United States, shall be borne equally by the three (3) States.

In addition to the powers and duties hereinbefore specifically conferred upon such Commission and the Members thereof, the jurisdiction of such Commission shall extend only to the collection, correlation, and presentation of factual data and the maintenance of records having a bearing upon the administration of this Compact, and, by unanimous action, to the making of recommendations to the respective States upon matters connected with the administration of this Compact. In connection therewith, the Commission may employ such engineering and clerical aid as may be reasonably necessary within the limit of funds provided for that purpose by the respective States. Annual reports compiled for each calendar year shall be made by the Commission and transmitted to the Governors of the signatory States on or before March 1st following the year covered by the

report. The Commission may, by unanimous action, adopt rules and regulations consistent with the provisions of this Compact to govern their proceedings.

The findings of the Commission shall not be conclusive in any Court or tribunal which may be called upon to interpret or enforce this Compact.

Article XIII

At the expiration of every five-year period after the effective date of this Compact, the Commission may, by unanious consent, review any provisions hereof which are not substantive in character and which do not affect the basic principles upon which the Compact is founded, and shall meet for the consideration of such questions on the request of any member of the Commission; provided, however, that the provisions hereof shall remain in full force and effect until changed and amended within the intent of the Compact by unanimous action of the Commissioners, and until any changes in this Compact are ratified by the Legislatures of the respective States and consented to by the Congress, in the same manner as this Compact is required to be ratified to become effective.

Article XIV

The schedules herein contained and the quantities of water herein allocated shall never be increased nor diminished by reason of any increase or diminution in the delivery or loss of water to Mexico.

Article XV

The physical and other conditions characteristic of the Rio Grande and peculiar to the territory drained and served thereby, and to the development thereof, have actuated this Compact and none of the signatory States admits that any provisions herein contained establishes any general principle or precedent applicable to other interstate streams.

Article XVI

Nothing in this Compact shall be construed as affecting the obligations of the United States of America to Mexico under existing treaties, or to the Indian Tribes, or as impairing the Rights of the Indian Tribes.

Article XVII

This Compact shall become effective when ratified by the Legislatures of each of the signatory States and consented to by the Congress of the United States. Notice of ratification shall be given

by the Governor of each State to the Governors of the other States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of each of the signatory States of the consent of the Congress of the United States.

IN WITNESS WHEREOF, The Commissioners have signed this Compact in quadruplicate original, one of which shall be deposited in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Sante Fe, in the State of New Mexico, on the 18th day of March, in the year of our Lord, One Thousand Nine Hundred and Thirty-eight.

(Signed) M.C. Hinderlider
(Signed) Thomas M. McClure
(Signed) Frank B. Clayton
Approved:

(Signed) S.O. Harper

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

CHAPTER 42. PECOS RIVER COMPACT

Sec. 42.001. RATIFICATION. The Pecos River Compact, the text of which is set out in Section 42.010 of this code, was ratified by the legislature of this state in Chapter 30, Acts of the 51st Legislature, Regular Session, 1949, after having been signed at Santa Fe, New Mexico, on December 3, 1948, by John H. Bliss, commissioner for the State of New Mexico, and Charles H. Miller, commissioner for the State of Texas, and approved by Berkeley Johnson, representing the United States.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 42.002. ORIGINAL COPY. An original copy of the compact is on file in the office of the secretary of state.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 42.003. COMMISSIONER. The governor, with the advice and consent of the senate, shall appoint a commissioner to represent this state on the commission established by Article V of the compact.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 42.004. TERM OF OFFICE. The commissioner holds office for a term of six years and until his successor is appointed and has qualified.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1985, 69th Leg., ch. 607, Sec. 2.

Sec. 42.005. OATH. The commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform his duties as commissioner.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 42.006. COMPENSATION; EXPENSES. The commissioner is entitled to compensation as provided by legislative appropriation. He is entitled to reimbursement for actual expenses incurred while traveling in the discharge of his duties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 42.007. EMPLOYEES; ADMINISTRATIVE EXPENSES. The commissioner may employ engineering, legal, and clerical personnel as necessary to protect the interest of the state and to carry out and enforce the terms of the compact. He may incur necessary office expenses and other expenses incident to the proper performance of his duties and the proper administration of the compact. However, the commissioner shall not incur any financial obligation on behalf of this state until the legislature has authorized and appropriated money for the obligation.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 42.0071. NOTICE OF COMPACT MEETINGS. For informational purposes, the commissioner shall file with the secretary of state notice of compact meetings for publication in the Texas Register.

Added by Acts 1985, 69th Leg., ch. 607, Sec. 1, eff. Sept. 1, 1985.

Sec. 42.008. POWERS AND DUTIES. (a) The commissioner is responsible for administering the provisions of the compact, and he has all the powers and duties prescribed by the compact.

(b) The commissioner may meet and confer with the New Mexico commissioner at any place the commission considers proper.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 42.009. COOPERATION OF TEXAS NATURAL RESOURCE CONSERVATION COMMISSION. The Texas Natural Resource Conservation Commission shall cooperate with the commissioner in the performance of his duties and shall furnish him any available data and information he needs.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1985, 69th Leg., ch. 607, Sec. 3, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 795, Sec. 1.135, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 34, eff. June 19, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 11.315, eff. Sept. 1, 1995.

Sec. 42.010. TEXT OF COMPACT. The Pecos River Compact reads as follows:

PECOS RIVER COMPACT

Entered Into by the States of

NEW MEXICO

and

TEXAS

Santa Fe, New Mexico

December 3, 1948

PECOS RIVER COMPACT

The State of New Mexico and the State of Texas, acting through their Commissioners, John H. Bliss for the State of New Mexico and Charles H. Miller for the State of Texas, after negotiations participated in by Berkeley Johnson, appointed by the President as the representative of the United States of America, have agreed respecting the uses, apportionment and deliveries of the water of the Pecos River as follows:

Article I

The major purposes of this Compact are to provide for the equitable division and apportionment of the use of the waters of the Pecos River; to promote interstate comity; to remove causes of present and future controversies; to make secure and protect present development within the states; to facilitate the construction of works for, (a) the salvage of water, (b) the more efficient use of water, and (c) the protection of life and property from floods.

Article II

As used in this Compact:

(a) The term "Pecos River" means the tributary of the Rio Grande which rises in north-central New Mexico and flows in a southerly direction through New Mexico and Texas and joins the Rio Grande near the town of Langtry, Texas, and includes all tributaries of said Pecos River.

(b) The term "Pecos River Basin" means all of the contributing drainage area of the Pecos River and its tributaries above its mouth near Langtry, Texas.

(c) "New Mexico" and "Texas" mean the State of New Mexico and the State of Texas, respectively; "United States" means the United States of America.

(d) The term "Commission" means the agency created by this Compact for the administration thereof.

(e) The term "deplete by man's activities" means to diminish the stream flow of the Pecos River at any given point as the result of beneficial consumptive uses of water within the Pecos River Basin above such point. For the purposes of this Compact it does not include the diminution of such flow by encroachment of salt cedars or

other like growth, or by deterioration of the channel of the stream.

(f) The term "Report of the Engineering Advisory Committee" means that certain report of the Engineering Advisory Committee dated January, 1948, and all appendices thereto; including, basic data, processes, and analyses utilized in preparing that report, all of which were reviewed, approved, and adopted by the Commissioners signing this Compact at a meeting held in Santa Fe, New Mexico, on December 3, 1948, and which are included in the Minutes of that meeting.

(g) The term "1947 condition" means that situation in the Pecos River Basin as described and defined in the Report of the Engineering Advisory Committee. In determining any question of fact hereafter arising as to such situation, reference shall be made to, and decisions shall be based on, such report.

(h) The term "water salvaged" means that quantity of water which may be recovered and made available for beneficial use and which quantity of water under the 1947 condition was non-beneficially consumed by natural processes.

(i) The term "unappropriated flood waters" means water originating in the Pecos River Basin above Red Bluff Dam in Texas, the impoundment of which will not deplete the water usable by the storage and diversion facilities existing in either state under the 1947 condition and which if not impounded will flow past Girvin, Texas.

Article III

(a) Except as stated in paragraph (f) of this Article, New Mexico shall not deplete by man's activities the flow of the Pecos River at the New Mexico-Texas state line below an amount which will give to Texas a quantity of water equivalent to that available to Texas under the 1947 condition.

(b) Except as to the unappropriated flood waters thereof, the apportionment of which is included in and provided for by paragraph (f) of this Article, the beneficial consumptive use of the waters of the Delaware River is hereby apportioned to Texas, and the quantity of such beneficial consumptive use shall be included in determining waters received under the provisions of paragraph (a) of this Article.

(c) The beneficial consumptive use of water salvaged in New Mexico through the construction and operation of a project or projects by the United States or by joint undertakings of Texas and

New Mexico, is hereby apportioned forty-three per cent (43%) to Texas and fifty-seven per cent (57%) to New Mexico.

(d) Except as to water salvaged, apportioned in paragraph (c) of this Article, the beneficial consumptive use of water which shall be non-beneficially consumed, and which is recovered, is hereby apportioned to New Mexico but not to have the effect of diminishing the quantity of water available to Texas under the 1947 condition.

(e) Any water salvaged in Texas is hereby apportioned to Texas.

(f) Beneficial consumptive use of unappropriated flood waters is hereby apportioned fifty per cent (50%) to Texas and fifty per cent (50%) to New Mexico.

Article IV

(a) New Mexico and Texas shall cooperate to support legislation for the authorization and construction of projects to eliminate nonbeneficial consumption of water.

(b) New Mexico and Texas shall cooperate with agencies of the United States to devise and effectuate means of alleviating the salinity conditions of the Pecos River.

(c) New Mexico and Texas each may:

(i) Construct additional reservoir capacity to replace reservoir capacity made unusable by any cause.

(ii) Construct additional reservoir capacity for the utilization of water salvaged and unappropriated flood waters apportioned by this Compact to such state.

(iii) Construct additional reservoir capacity for the purpose of making more efficient use of water apportioned by this Compact to such state.

(d) Neither New Mexico nor Texas will oppose the construction of any facilities permitted by this Compact, and New Mexico and Texas will cooperate to obtain the construction of facilities that will be of joint benefit to the two states.

(e) The Commission may determine the conditions under which Texas may store water in works constructed in and operated by New Mexico.

(f) No reservoir shall be constructed and operated in New Mexico above Avalon Dam for the sole benefit of Texas unless the Commission shall so determine.

(g) New Mexico and Texas each has the right to construct and operate works for the purpose of preventing flood damage.

(h) All facilities shall be operated in such manner as to carry

out the terms of this Compact.

Article V

(a) There is hereby created an interstate administrative agency to be known as the "Pecos River Commission." The Commission shall be composed of one Commissioner representing each of the states of New Mexico and Texas, designated or appointed in accordance with the laws of each such state, and, if designated by the President, one Commissioner representing the United States. The President is hereby requested to designate such a Commissioner. If so designated, the Commissioner representing the United States shall be the presiding officer of the Commission, but shall not have the right to vote in any of the deliberations of the Commission. All members of the Commission must be present to constitute a quorum.

(b) The salaries and personal expenses of each Commissioner shall be paid by the government which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact and which are not paid by the United States shall be borne equally by the two states. On or before November 1 of each even numbered year the Commission shall adopt and transmit to the Governors of the two states and to the President a budget covering an estimate of its expenses for the following two years. The payment of the expenses of the Commission and of its employees shall not be subject to the audit and accounting procedures of either of the two states. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified independent public accountant and the report of the audit shall be included in, and become a part of, the annual report of the Commission.

(c) The Commission may appoint a secretary who, while so acting, shall not be an employee of either state. He shall serve for such term, receive such salary, and perform such duties as the Commission may direct. The Commission may employ such engineering, legal, clerical, and other personnel as in its judgment may be necessary for the performance of its functions under this Compact. In the hiring of employees the Commission shall not be bound by the civil service laws of either state.

(d) The Commission, so far as consistent with this Compact, shall have power to:

1. Adopt rules and regulations;

2. Locate, establish, construct, operate, maintain, and abandon

water gaging stations, independently or in cooperation with appropriate governmental agencies;

3. Engage in studies of water supplies of the Pecos River and its tributaries, independently or in cooperation with appropriate governmental agencies;

4. Collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions, salvage, and use of the waters of the Pecos River and its tributaries, independently or in cooperation with appropriate governmental agencies;

5. Make findings as to any change in depletion by man's activities in New Mexico, and on the Delaware River in Texas;

6. Make findings as to the deliveries of water at the New Mexico-Texas state line;

7. Make findings as to the quantities of water salvaged and the amount thereof delivered at the New Mexico-Texas state line;

8. Make findings as to quantities of water non-beneficially consumed in New Mexico;

9. Make findings as to quantities of unappropriated flood waters;

10. Make findings as to the quantities of reservoir losses from reservoirs constructed in New Mexico which may be used for the benefit of both states, and as to the share thereof charged under Article VI hereof to each of the states;

11. Acquire and hold such personal and real property as may be necessary for the performance of its duties hereunder and to dispose of the same when no longer required;

12. Perform all functions required of it by this Compact and do all things necessary, proper or convenient in the performance of its duties hereunder, independently or in cooperation with appropriate governmental agencies;

13. Make and transmit annually to the Governors of the signatory states and to the President of the United States on or before the last day of February of each year, a report covering the activities of the Commission for the preceding year.

(e) The Commission shall make available to the Governor of each of the signatory states any information within its possession at any time, and shall always provide free access to its records by the Governors of each of the States, or their representatives, or authorized representatives of the United States.

(f) Findings of fact made by the Commission shall not be

conclusive in any court, or before any agency or tribunal, but shall constitute prima facie evidence of the facts found.

(g) The organization meeting of the Commission shall be held within four months from the effective date of this Compact.

Article VI

The following principles shall govern in regard to the apportionment made by Article III of this Compact:

(a) The Report of the Engineering Advisory Committee, supplemented by additional data hereafter accumulated, shall be used by the Commission in making administrative determinations.

(b) Unless otherwise determined by the Commission, depletions by man's activities, state-line flows, quantities of water salvaged, and quantities of unappropriated flood waters shall be determined on the basis of three-year periods reckoned in continuing progressive series beginning with the first day of January next succeeding the ratification of this Compact.

(c) Unless and until a more feasible method is devised and adopted by the Commission the inflow-outflow method, as described in the Report of the Engineering Advisory Committee, shall be used to:

(i) Determine the effect on the state-line flow of any change in depletions by man's activities or otherwise, of the waters of the Pecos River in New Mexico.

(ii) Measure at or near the Avalon Dam in New Mexico the quantities of water salvaged.

(iii) Measure at or near the state line any water released from storage for the benefit of Texas as provided for in subparagraph (d) of this Article.

(iv) Measure the quantities of unappropriated flood waters apportioned to Texas which have not been stored and regulated by reservoirs in New Mexico.

(v) Measure any other quantities of water required to be measured under the terms of this Compact which are susceptible of being measured by the inflow-outflow method.

(d) If unappropriated flood waters apportioned to Texas are stored in facilities constructed in New Mexico, the following principles shall apply:

(i) In case of spill from a reservoir constructed in and operated by New Mexico, the water stored to the credit of Texas will be considered as the first water to spill.

(ii) In case of spill from a reservoir jointly constructed and

operated, the water stored to the credit of either state shall not be affected.

(iii) Reservoir losses shall be charged to each state in proportion to the quantity of water belonging to that state in storage at the time the losses occur.

(iv) The water impounded to the credit of Texas shall be released by New Mexico on the demand of Texas.

(e) Water salvaged shall be measured at or near the Avalon Dam in New Mexico and to the quantity thereof shall be added a quantity equal to the quantity of salvaged water depleted by man's activities above Avalon Dam. The quantity of water salvaged that is apportioned to Texas shall be delivered by New Mexico at the New Mexico-Texas state line. The quantity of unappropriated flood waters impounded under paragraph (d) of this Article, when released shall be delivered by New Mexico at the New Mexico-Texas state line in the quantity released less channel losses. The unappropriated flood waters apportioned to Texas by this Compact that are not impounded in reservoirs in New Mexico shall be measured and delivered at the New Mexico-Texas state line.

(f) Beneficial use shall be the basis, the measure, and the limit of the right to use water.

Article VII

In the event of importation of water by man's activities to the Pecos River Basin from any other river basin the state making the importation shall have the exclusive use of such imported water.

Article VIII

The provisions of this Compact shall not apply to, or interfere with, the right or power of either signatory state to regulate within its boundaries the appropriation, use and control of water, not inconsistent with its obligations under this Compact.

Article IX

In maintaining the flows at the New Mexico-Texas state line required by this Compact, New Mexico shall in all instances apply the principle of prior appropriation within New Mexico.

Article X

The failure of either state to use the water, or any part thereof, the use of which is apportioned to it under the terms of this Compact, shall not constitute a relinquishment of the right to such use, nor shall it constitute a forfeiture or abandonment of the right to such use.

Article XI

Nothing in this Compact shall be construed as:

(a) Affecting the obligations of the United States under the Treaty with the United Mexican States (Treaty Series 994);

(b) Affecting any rights or powers of the United States, its agencies or instrumentalities, in or to the waters of the Pecos River, or its capacity to acquire rights in and to the use of said waters;

(c) Subjecting any property of the United States, its agencies or instrumentalities, to taxation by any state or subdivision thereof, or creating any obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any state or political subdivision thereof, state agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(d) Subjecting any property of the United States, its agencies or instrumentalities, to the laws of any state to an extent other than the extent to which such laws would apply without regard to this Compact.

Article XII

The consumptive use of water by the United States or any of its agencies, instrumentalities or wards shall be charged as a use by the state in which the use is made; provided, that such consumptive use incident to the diversion, impounding, or conveyance of water in one state for use in the other state shall be charged to such latter state.

Article XIII

This Compact shall not be construed as establishing any general principle or precedent applicable to other interstate streams.

Article XIV

This Compact may be terminated at any time by appropriate action of the legislatures of both of the signatory states. In the event of such termination, all rights established under it shall continue unimpaired.

Article XV

This Compact shall become binding and obligatory when it shall have been ratified by the legislature of each State and approved by the Congress of the United States. Notice of ratification by the legislature of 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, and the President is hereby requested to give notice to the Governor of each State of approval by the Congress of the United States.

In Witness Whereof, the Commissioners have executed three counterparts hereof each of which shall be and constitute an original, one of which shall be deposited in the archives of the Department of State of the United States, and one of which shall be forwarded to the Governor of each State.

Done at the City of Santa Fe, State of New Mexico, this 3rd day of December, 1948.

_____

JOHN H. BLISS
Commissioner for the State of New Mexico

_____

CHARLES H. MILLER
Commissioner for the State of Texas

APPROVED

_____

BERKELEY JOHNSON
Representative of the United States of America

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

CHAPTER 43. CANADIAN RIVER COMPACT

Sec. 43.001. RATIFICATION. The Canadian River Compact, the text of which is set out in Section 43.006 of this code, was ratified by the legislature of this state in Chapter 153, Acts of the 52nd Legislature, Regular Session, 1951, after having been signed at Santa Fe, New Mexico, on December 6, 1950, by John H. Bliss, commissioner for the State of New Mexico, E.V. Spence, commissioner for the State of Texas, and Clarence Burch, commissioner for the State of Oklahoma, and approved by Berkeley Johnson, representing the United States.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 43.002. ORIGINAL COPY. An original copy of the compact is on file in the office of the secretary of state.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 43.003. COMMISSIONER. The governor shall appoint a commissioner to represent this state on the commission established by Article IX of the compact.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 43.004. EXPENSES. The commissioner is entitled to reimbursement for actual expenses incurred in the discharge of his duties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 43.0041. TERM OF OFFICE. The commissioner holds office for a term of six years and until his successor is appointed and has qualified.

Added by Acts 1985, 69th Leg., ch. 606, Sec. 1.

Sec. 43.0042. OATH. The commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform his duties as commissioner.

Added by Acts 1985, 69th Leg., ch. 606, Sec. 2, eff. Sept. 1, 1985.

Sec. 43.0043. EMPLOYEES; ADMINISTRATIVE EXPENSES. The commissioner, in conjunction with the other members of the commission and as authorized by legislative appropriation, may employ engineering and clerical personnel and may incur necessary office expenses and other expenses incidental to the proper performance of his duties and the proper administration of the compact. However, the commissioner shall not incur any financial obligation on behalf of the state until the legislature has authorized and appropriated money for the obligation.

Added by Acts 1985, 69th Leg., ch. 606, Sec. 2, eff. Sept. 1, 1985.

Sec. 43.005. POWERS AND DUTIES. (a) The commissioner is responsible for administering the provisions of the compact, and he has all the powers and duties prescribed by the compact.

(b) The commissioner may meet and confer with the other commissioners at any place the commission considers proper.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 43.0051. NOTICE OF COMPACT MEETINGS. For informational purposes, the commissioner shall file with the secretary of state notice of compact meetings for publication in the Texas Register.

Added by Acts 1985, 69th Leg., ch. 606, Sec. 2, eff. Sept. 1, 1985.

Sec. 43.0052. COOPERATION OF TEXAS NATURAL RESOURCE CONSERVATION COMMISSION. The Texas Natural Resource Conservation Commission shall cooperate with the commissioner in the performance of his duties and shall furnish him any available data and information he needs.

Added by Acts 1985, 69th Leg., ch. 606, Sec. 2, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 34, eff. June 19, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 11.316, eff. Sept. 1, 1995.

Sec. 43.0053. CANADIAN RIVER REVOLVING FUND. All sums of money paid to the Canadian River revolving fund composed solely of funds of the State of Texas shall be deposited in the State Treasury to the credit of a special fund to be known as the Canadian River revolving fund and may be used only for the administration of this Act.

Added by Acts 1985, 69th Leg., ch. 606, Sec. 2, eff. Sept. 1, 1985.

Sec. 43.006. TEXT OF COMPACT. The Canadian River Compact reads as follows:

CANADIAN RIVER COMPACT

The State of New Mexico, the State of Texas, and the State of Oklahoma, acting through their Commissioners, John H. Bliss for the State of New Mexico, E.V. Spence for the State of Texas, and Clarence Burch for the State of Oklahoma, after negotiations participated in by Berkeley Johnson, appointed by the President as the representative of the United States of America, have agreed respecting Canadian River as follows:

Article I

The major purposes of this Compact are to promote interstate comity; to remove causes of present and future controversy; to make secure and protect present developments within the States; and to provide for the construction of additional works for the conservation of the waters of Canadian River.

Article II

As used in this Compact:

(a) The term "Canadian River" means the tributary of Arkansas River which rises in northeastern New Mexico and flows in an easterly direction through New Mexico, Texas and Oklahoma and includes North Canadian River and all other tributaries of said Canadian River.

(b) The term "North Canadian River" means that major tributary of Canadian River officially known as North Canadian River from its source to its junction with Canadian River and includes all tributaries of North Canadian River.

(c) The term "Commission" means the agency created by this Compact for the administration thereof.

(d) The term "conservation storage" means that portion of the capacity of reservoirs available for the storage of water for subsequent release for domestic, municipal, irrigation and industrial uses, or any of them, and it excludes any portion of the capacity of reservoirs allocated solely to flood control, power production and sediment control, or any of them.

Article III

All rights to any of the waters of Canadian River which have been perfected by beneficial use are hereby recognized and affirmed.

Article IV

(a) New Mexico shall have free and unrestricted use of all waters originating in the drainage basin of Canadian River above Conchas Dam.

(b) New Mexico shall have free and unrestricted use of all

waters originating in the drainage basin of Canadian River in New Mexico below Conchas Dam, provided that the amount of conservation storage in New Mexico available for impounding these waters which originate in the drainage basin of Canadian River below Conchas Dam shall be limited to an aggregate of two hundred thousand (200,000) acre-feet.

(c) The right of New Mexico to provide conservation storage in the drainage basin of North Canadian River shall be limited to the storage of such water as at the time may be unappropriated under the laws of New Mexico and of Oklahoma.

Article V

Texas shall have free and unrestricted use of all waters of Canadian River in Texas, subject to the limitations upon storage of water set forth below:

(a) The right of Texas to impound any of the waters of North Canadian River shall be limited to storage on tributaries of said River in Texas for municipal uses, for household and domestic uses, livestock watering, and the irrigation of lands which are cultivated solely for the purpose of providing food and feed for the householders and domestic livestock actually living or kept on the property.

(b) Until more than three hundred thousand (300,000) acre-feet of conservation storage shall be provided in Oklahoma, exclusive of reservoirs in the drainage basin of North Canadian River and exclusive of reservoirs in the drainage basin of Canadian River east of the 97th meridian, the right of Texas to retain water in conservation storage, exclusive of waters of North Canadian River, shall be limited to five hundred thousand (500,000) acre-feet; thereafter the right of Texas to impound and retain such waters in storage shall be limited to an aggregate quantity equal to two hundred thousand (200,000) acre-feet plus whatever amount of water shall be at the same time in conservation storage in reservoirs in the drainage basin of Canadian River in Oklahoma, exclusive of reservoirs in the drainage basin of North Canadian River and exclusive of reservoirs east of the 97th meridian; and for the purpose of determining the amount of water in conservation storage, the maximum quantity of water in storage following each flood or series of floods shall be used; provided, that the right of Texas to retain and use any quantity of water previously impounded shall not be reduced by any subsequent application of the provisions of this

paragraph (b).

(c) Should Texas for any reason impound any amount of water greater than the aggregate quantity specified in paragraph (b) of this Article, such excess shall be retained in storage until under the provisions of said paragraph Texas shall become entitled to its use; provided, that, in event of spill from conservation storage, any such excess shall be reduced by the amount of such spill from the most easterly reservoir on Canadian River in Texas; provided further, that all such excess quantities in storage shall be reduced monthly to compensate for reservoir losses in proportion to the total amount of water in the reservoir or reservoirs in which such excess water is being held; and provided further that on demand by the Commissioner for Oklahoma the remainder of any such excess quantity of water in storage shall be released into the channel of Canadian River at the greatest rate practicable.

Article VI

Oklahoma shall have free and unrestricted use of all waters of Canadian River in Oklahoma.

Article VII

The Commission may permit New Mexico to impound more water than the amount set forth in Article IV and may permit Texas to impound more water than the amount set forth in Article V; provided, that no State shall thereby be deprived of water needed for beneficial use; provided further that each such permission shall be for a limited period not exceeding twelve (12) months; and provided further that no State or user of water within any State shall thereby acquire any right to the continued use of any such quantity of water so permitted to be impounded.

Article VIII

Each State shall furnish to the Commission at intervals designated by the Commission accurate records of the quantities of water stored in reservoirs pertinent to the administration of this Compact.

Article IX

(a) There is hereby created an interstate administrative agency to be known as the "Canadian River Commission." The Commission shall be composed of three (3) Commissioners, one (1) from each of the signatory States, designated or appointed in accordance with the laws of each such State, and if designated by the President an additional Commissioner representing the United States. The President is hereby

requested to designate such a Commissioner. If so designated, the Commissioner representing the United States shall be the presiding officer of the Commission, but shall not have the right to vote in any of the deliberations of the Commission. All members of the Commission must be present to constitute a quorum. A unanimous vote of the Commissioners for the three (3) signatory States shall be necessary to all actions taken by the Commission.

(b) The salaries and personal expenses of each Commissioner shall be paid by the government which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact and which are not paid by the United States shall be borne equally by the three (3) States and be paid by the Commission out of a revolving fund hereby created to be known as the "Canadian River Revolving Fund." Such fund shall be initiated and maintained by equal payments of each State into the fund in such amounts as will be necessary for administration of this Compact. Disbursements shall be made from said fund in such manner as may be authorized by the Commission. Said fund shall not be subject to the audit and accounting procedures of the States. However, all receipts and disbursements of funds handled by the Commission shall be audited by a qualified independent public accountant at regular intervals and the report of the audit shall be included in and become a part of the annual report of the Commission.

(c) The Commission may:

(1) Employ such engineering, legal, clerical, and other personnel as in its judgment may be necessary for the performance of its functions under this Compact;

(2) Enter into contracts with appropriate Federal agencies for the collection, correlation, and presentation of factual data, for the maintenance of records, and for the preparation of reports;

(3) Perform all functions required of it by this Compact and do all things necessary, proper, or convenient in the performance of its duties hereunder, independently or in cooperation with appropriate governmental agencies.

(d) The Commission shall:

(1) Cause to be established, maintained and operated such stream and other gaging stations and evaporation stations as may from time to time be necessary for proper administration of the Compact, independently or in cooperation with appropriate governmental agencies;

(2) Make and transmit to the Governors of the signatory States on or before the last day of March of each year, a report covering the activities of the Commission for the preceding year;

(3) Make available to the Governor of any signatory state, on his request, any information within its possession at any time, and shall always provide access to its records by the Governors of the States, or their representatives, or by authorized representatives of the United States.

Article X

Nothing in this Compact shall be construed as:

(a) Affecting the obligations of the United States to the Indian Tribes;

(b) Subjecting any property of the United States, its agencies or instrumentalities, to taxation by any State or subdivision thereof, or creating any obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any State or political subdivision thereof, state agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(c) Subjecting any property of the United States, its agencies or instrumentalities, to the laws of any State to an extent other than the extent to which such laws would apply without regard to this Compact;

(d) Applying to, or interfering with, the right or power of any signatory State to regulate within its boundaries the appropriation, use and control of water, not inconsistent with its obligations under this Compact;

(e) Establishing any general principle or precedent applicable to other interstate streams.

Article XI

This Compact shall become binding and obligatory when it shall have been ratified by the Legislature of each State and approved by the Congress of the United States. Notice of ratification by the Legislature of each State shall be given by the Governor of that State to the Governors of the other States and to the President of the United States. The President is hereby requested to give notice to the Governor of each State of approval by the Congress of the United States.

IN WITNESS WHEREOF, The Commissioners have executed four (4)

counterparts hereof, each of which shall be and constitute an original, one (1) of which shall be deposited in the archives of the Department of State of the United States, and (1) of which shall be forwarded to the Governor of each State.

DONE at the City of Santa Fe, State of New Mexico, this 6th day of December, 1950.

/s/ John H. Bliss
John H. Bliss
Commissioner for the State of New Mexico

/s/ E.V. Spence
E.V. Spence
Commissioner for the State of Texas

/s/ Clarence Burch
Clarence Burch
Commissioner for the State of Oklahoma

APPROVED:
/s/ Berkeley Johnson
Berkeley Johnson
Representative of the United States of America

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

CHAPTER 44. SABINE RIVER COMPACT

Sec. 44.001. RATIFICATION. The Sabine River Compact, the text of which is set out in Section 44.010 of this code, was ratified by the legislature of this state in Chapter 63, Acts of the 53rd Legislature, Regular Session, 1953, after having been signed at Logansport, Louisiana, on January 26, 1953, by Roy T. Sessums, representative for the State of Louisiana, and Henry L. Woodworth and John W. Simmons, representatives for the State of Texas, and approved by Louis W. Prentiss, representative of the United States.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 44.002. ORIGINAL COPY. An original copy of the compact is on file in the office of the secretary of state.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 44.003. MEMBERS. The governor, with the advice and consent of the senate, shall appoint two members to represent this state on the administration established by Article VII of the compact.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 44.004. TERMS OF OFFICE. The members hold office for staggered terms of six years, with the term of one member expiring every three years. Each member holds office until his successor is appointed and has qualified.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 44.005. OATH. Each member shall take the constitutional oath of office and shall also take an oath to faithfully perform his duties as a member of the compact administration.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 44.006. COMPENSATION; EXPENSES. Each member is entitled to compensation as provided by legislative appropriation and to reimbursement for actual expenses incurred in the discharge of his or her duties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 5, ch. 4, Sec. 1, eff. Feb. 22, 1979.

Sec. 44.007. EMPLOYEES; ADMINISTRATIVE EXPENSES. The members may make investigations and appoint engineering, legal, and clerical

employees as necessary to protect the interest of this state and to carry out and enforce the compact. They may incur necessary office expenses and other expenses incident to the proper performance of their duties and the proper administration of the compact.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 44.0071. NOTICE OF COMPACT MEETINGS. For informational purposes, the commissioners shall file with the secretary of state notice of compact meetings for publication in the Texas Register.

Added by Acts 1985, 69th Leg., ch. 222, Sec. 1, eff. Sept. 1, 1985.

Sec. 44.008. POWERS AND DUTIES. (a) The members are responsible for administering the provisions of the compact, and have all the powers and duties prescribed by the compact.

(b) The members may meet and confer with the Louisiana members at any place the administration considers proper.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 44.009. COOPERATION OF TEXAS NATURAL RESOURCE CONSERVATION COMMISSION. The Texas Natural Resource Conservation Commission shall cooperate with the members in the performance of their duties and shall furnish them any available data and information they need.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1985, 69th Leg., ch. 222, Sec. 2, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 795, Sec. 1.135, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 34, eff. June 19, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 11.317, eff. Sept. 1, 1995.

Sec. 44.010. TEXT OF COMPACT. The Sabine River Compact reads as follows:

SABINE RIVER COMPACT
Entered Into by the States of
LOUISIANA

and
TEXAS

Logansport, Louisiana
January 26, 1953

SABINE RIVER COMPACT

The State of Texas and the State of Louisiana, parties signatory to this Compact (hereinafter referred to as "Texas" and "Louisiana", respectively, or individually as a "State", or collectively as the "States"), having resolved to conclude a compact with respect to the waters of the Sabine River, and having appointed representatives as follows:

For Texas:	Henry L. Woodworth, Interstate Compact Commissioner for Texas; and John W. Simmons, President of the Sabine River Authority of Texas;
For Louisiana:	Roy T. Sessums, Director of the Department of Public Works of the State of Louisiana;

and consent to negotiate and enter into the said Compact having been granted by Act of the Congress of the United States approved November 1, 1951 (Public Law No. 252; 82nd Congress, First Session), and pursuant thereto the President having designated Louis W. Prentiss as the representative of the United States, the said representatives for Texas and Louisiana, after negotiations participated in by the representative of the United States, have for such Compact agreed upon Articles as hereinafter set forth. The major purposes of this Compact are to provide for an equitable apportionment between the States of Louisiana and Texas of the waters of the Sabine River and its tributaries, thereby removing the causes of present and future controversy between the States over the conservation and utilization of said waters; to encourage the development, conservation and utilization of the water resources of the Sabine River and its tributaries; and to establish a basis for cooperative planning and action by the States for the construction, operation and maintenance of projects for water conservation and utilization purposes on that reach of the Sabine River touching both States, and for apportionment of the benefits therefrom.

ARTICLE I

As used in this Compact:

(a) The word "Stateline" means the point on the Sabine River where its waters in downstream flow first touch the States of both Louisiana and Texas.

(b) The term "waters of the Sabine River" means the waters either originating in the natural drainage basin of the Sabine River, or appearing as streamflow in said River and its tributaries, from its headwater source down to the mouth of the River where it enters into Sabine Lake.

(c) The term "Stateline flow" means the flow of waters of the Sabine River as determined by the Logansport gauge located on the U.S. Highway 84, approximately four (4) river miles downstream from the Stateline. This flow, or the flow as determined by such substitute gauging station as may be established by the Administration, as hereinafter defined, pursuant to the provisions of Article VII of this Compact, shall be deemed the actual Stateline flow.

(d) The term "Stateline reach" means that portion of the Sabine River lying between the Stateline and Sabine Lake.

(e) The term "the Administration" means the Sabine River Compact Administration established under Article VII.

(f) The term "Domestic use" means the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of an area not to exceed one acre, obtained directly from the Sabine River or its tributaries by an individual or family unit, not supplied by a water company, water district or municipality.

(g) The term "stock water use" means the use of water for any and all livestock and poultry.

(h) The term "consumptive use" means use of water resulting in its permanent removal from the stream.

(i) The terms "domestic" and "stock water" reservoir mean any reservoir for either or both of such uses having a storage capacity of fifty (50) acre feet or less.

(j) "Stored water" means water stored in reservoirs (exclusive of domestic or stock water reservoirs) or water withdrawn or released from reservoirs for specific uses and the identifiable return flow from such uses.

(k) The term "free water" means all waters other than "stored

waters" in the Stateline reach including, but not limited to, that appearing as natural stream flow and not withdrawn or released from a reservoir for specific uses. Waters released from reservoirs for the purpose of maintaining stream flows as provided in Article V, shall be "free water". All reservoir spills or releases of stored waters made in anticipation of spills, shall be free water.

(l) Where the name of the State or the term "State" is used in this Compact, it shall be construed to include any person or entity of any nature whatsoever of the States of Louisiana or Texas using, claiming, or in any manner asserting any right to the use of the waters of the Sabine River under the authority of that State.

(m) Wherever any State or Federal official or agency is referred to in this Compact, such reference shall apply equally to the comparable official or agency succeeding to their duties and functions.

ARTICLE II

Subject to the provisions of Article X, nothing in this Compact shall be construed as applying to, or interfering with, the right or power of either signatory State to regulate within its boundaries the appropriation, use and control of water, not inconsistent with its obligation under this Compact.

ARTICLE III

Subject to the provisions of Article X, all rights to any of the waters of the Sabine River which have been obtained in accordance with the laws of the States are hereby recognized and affirmed; provided, however, that withdrawals, from time to time, for the satisfaction of such rights, shall be subject to the availability of supply in accordance with the apportionment of water provided under the terms of this Compact.

ARTICLE IV

Texas shall have free and unrestricted use of all waters of the Sabine River and its tributaries above the Stateline subject, however, to the provisions of Articles V and X.

ARTICLE V

Texas and Louisiana hereby agree upon the following apportionment of the waters of the Sabine River:

(a) All free water in the Stateline reach shall be divided equally between the two States, this division to be made without reference to the origin.

(b) The necessity of maintaining a minimum flow at the

Stateline for the benefit of water users below the Stateline in both States is recognized, and to this end it is hereby agreed that:

(1) Reservoirs and permits above the Stateline existing as of January 1, 1953 shall not be liable for maintenance of the flow at the Stateline.

(2) After January 1, 1953, neither State shall permit or authorize any additional uses which would have the effect of reducing the flow at the Stateline to less than 36 cubic feet per second.

(3) Reservoirs on which construction is commenced after January 1, 1953, above the Stateline shall be liable for their share of water necessary to provide a minimum flow at the Stateline of 36 cubic feet per second; provided, that no reservoir shall be liable for a greater percentage of this minimum flow than the percentage of the drainage area above the Stateline contributing to that reservoir, exclusive of the watershed of any reservoir on which construction was started prior to January 1, 1953. Water released from Texas' reservoirs to establish the minimum flow of 36 cubic feet per second, shall be classed as free water at the Stateline and divided equally between the two States.

(c) The right of each State to construct impoundment reservoirs and other works of improvement on the Sabine River or its tributaries located wholly within its boundaries is hereby recognized.

(d) In the event that either State constructs reservoir storage on the tributaries below Stateline after January 1, 1953, there shall be deducted from that State's share of the flow in the Sabine River all reductions in flow resulting from the operation of the tributary storage and conversely such State shall be entitled to the increased flow resulting from the regulation provided by such storage.

(e) Each State shall have the right to use the main channel of the Sabine River to convey water stored on the Sabine River or its tributaries located wholly within its boundaries, downstream to a desired point of removal without loss of ownership of such stored waters. In the event that such water is released by a State through the natural channel of a tributary and the channel of the Sabine River to a downstream point of removal, a reduction shall be made in the amount of water which can be withdrawn at the point of removal equal to the transmission losses.

(f) Each State shall have the right to withdraw its share of the water from the channel of the Sabine River in the Stateline reach in accordance with Article VII. Neither State shall withdraw at any

point more than its share of the flow at that point except, that pursuant to findings and determination of the Administration as provided under Article VII of this Compact, either State may withdraw more or less of its share of the water at any point providing that its aggregate withdrawal shall not exceed its total share. Withdrawals made pursuant to this paragraph shall not prejudice or impair the existing rights of users of Sabine River waters.

(g) Waters stored in reservoirs constructed by the States in the Stateline reach shall be shared by each State in proportion to its contribution to the cost of storage. Neither State shall have the right to construct a dam on the Stateline reach without the consent of the other State.

(h) Each State may vary the rate and manner of withdrawal of its share of such jointly stored waters on the Stateline reach, subject to meeting the obligations for amortization of the cost of the joint storage. In any event, neither State shall withdraw more than its prorata share in any one year (a year meaning a water year, October 1st to September 30th) except by authority of the Administration. All jointly stored water remaining at the end of a water year shall be reapportioned between the States in the same proportion as their contribution to the cost of the storage.

(i) Except for jointly stored water, as provided in (h) above, each State must use its apportionment of the natural stream flows as they occur and there shall be no allowance of accumulation of credits or debits for or against either State. The failure of either State to use the stream flow or any part thereof, the use of which is apportioned to it under the terms of this Compact, shall not constitute a relinquishment of the right to such use in the future; conversely, the failure of either State to use the water at the time it is available does not give it the right to the flow in excess of its share of the flow at any other time.

(j) From the apportionment of waters of the Sabine River as defined in this Article, there shall be excluded from such apportionment all waters consumed in either State for domestic and stock water uses. Domestic and stock water reservoirs shall be so excluded.

(k) Each State may use its share of the water apportioned to it in any manner that may be deemed beneficial by that State.

ARTICLE VI

(a) The States through their respective appropriate agencies or

subdivisions may construct jointly, or cooperate with any agency or instrumentality of the United States in the construction of works on the Stateline reach for the development, conservation and utilization for all beneficial purposes of the waters of the Sabine River.

(b) All monetary revenues growing out of any joint State ownership, title and interest in works constructed under Section (a) above, and accruing to the States in respect thereof, shall be divided between the States in proportion to their respective contributions to the cost of construction; provided however, that each State shall retain undivided all its revenues from recreational facilities within its boundaries incidental to the use of the waters of the Sabine River, and from its severally State-owned recreational facilities constructed appurtenant thereto.

(c) All operation and maintenance costs chargeable against any State ownership, title and interest in works constructed under Section (a) above, shall be assessed in proportion to the contribution of each State to the original cost of construction.

ARTICLE VII

(a) There is hereby created an interstate administrative agency to be designated as the "Sabine River Compact Administration" herein referred to as "the Administration".

(b) The Administration shall consist of two members from each State and of one member as representative of the United States, chosen by the President of the United States, who is hereby requested to appoint such a representative. The United States member shall be ex-officio chairman of the Administration without vote and shall not be a domiciliary of or reside in either State. The appointed members for Texas and Louisiana shall be designated within thirty days after the effective date of this Compact.

(c) The Texas members shall be appointed by the Governor for a term of six years; provided, however, that one of the original Texas members shall be appointed for a term to establish a half-term interval between the expiration dates of the terms of such members, and thereafter one such member shall be appointed each three (3) years for the regular term. The Louisiana members shall be residents of the Sabine Watershed and shall be appointed by the Governor for a term of four years, which shall run concurrent with the term of the Governor. Each state member shall hold office subject to the laws of his state or until his successor has been duly appointed and qualified.

(d) Interim vacancy, for whatever cause, in the office of any member of the Administration shall be filled for the unexpired term in the same manner as hereinabove provided for regular appointment.

(e) Within sixty days after the effective date of this Compact, the Administration shall meet and organize. A quorum for any meeting shall consist of three voting members of the Administration. Each State member shall have one vote, and every decision, authorization, determination, order or other action shall require the concurring votes of at least three members.

(f) The Administration shall have power to:

(1) Adopt, amend and revoke by-laws, rules and regulations, and prescribe procedures for administration of and consistent with the provisions of this Compact;

(2) Fix and determine from time to time the location of the Administration's principal office;

(3) Employ such engineering, legal, clerical and other personnel, without regard to the civil service laws of either State, as the Administration may determine necessary or proper to supplement State-furnished assistance as hereinafter provided, for the performance of its functions under this Compact; provided, that such employees shall be paid by and be responsible to the Administration and shall not be considered to be employees of either State;

(4) Procure such equipment, supplies and technical assistance as the Administration may determine to be necessary or proper to supplement State-furnished assistance as hereinafter provided, for the performance of its functions under this Compact;

(5) Adopt a seal which shall be judicially recognized.

(g) In cooperation with the chief official administering water rights in each State and with appropriate Federal agencies, the Administration shall have and perform powers and duties as follows:

(1) To collect, analyze, correlate, compile and report on data as to water supplies, stream flows, storage, diversions, salvage and use of the waters of the Sabine River and its tributaries, and as to all factual data necessary or proper for the administration of this Compact;

(2) To designate as official stations for the administration of this Compact such existing water gauging stations (and to operate, maintain, repair and abandon the same), and to locate, establish, construct, operate, maintain, repair and abandon additional such stations, as the Administration may from time to time

find and determine necessary or appropriate;

(3) To make findings as to the deliveries of water at Stateline as hereinabove provided, from the stream-flow records of the Stateline gauge which shall be operated and maintained by the Administration or in cooperation with the appropriate Federal agency, for determination of the actual Stateline flow unless the Administration shall find and determine that, because of changed physical conditions or for any other reason, reliable records are not obtainable thereat; in which case such existing Stateline station may with the approval of the Administration be abandoned and, with such approval, a substitute Stateline station established in lieu thereof;

(4) To make findings as to the quantities of reservoir storage (including joint storage) and releases therefrom, diversions, transmission losses and as to incident stream-flow changes, and as to the share of such quantities chargeable against or allocable to the respective States;

(5) To record and approve all points of diversion at which water is to be removed from the Sabine River or its tributaries below the Stateline; provided that, in any case, the State agency charged with the administration of the water laws for the State in which such point of diversion is located shall first have approved such point for removal or diversion; provided further, that any such point of removal or diversion once jointly approved by the appropriate State agency and the Administration, shall not thereafter be changed without the joint amendatory approval of such State agency and the Administration;

(6) To require water users at their expense to install and maintain measuring devices of approved type in any ditch, pumping station or other water diversion works on the Sabine River or its tributaries below the Stateline, as the Administration may determine necessary or proper for the purposes of this Compact; provided that the chief official of each State charged with the administration of water rights therein shall supervise the execution and enforcement of the Administration's requirements for such measuring devices;

(7) To investigate any violation of this Compact and to report findings and recommendations thereon to the chief official of the affected State charged with the administration of water rights, or to the Governor of such State as the Administration may deem proper;

(8) To acquire, hold, occupy and utilize such personal and real property as may be necessary or proper for the performance of its duties and functions under this Compact;

(9) To perform all functions required of the Administration by this Compact, and to do all things necessary, proper or convenient in the performance of its duties hereunder.

(h) Each State shall provide such available facilities, supplies, equipment, technical information and other assistance as the Administration may require to carry out its duties and function, and the execution and enforcement of the Administration's orders shall be the responsibility of the agents and officials of the respective States charged with the administration of water rights therein. State officials shall furnish pertinent factual and technical data to the Administration upon its request.

(i) Findings of fact made by the Administration shall not be conclusive in any court or before any agency or tribunal but shall constitute prima facie evidence of such facts.

(j) In the case of a tie vote on any of the Administration's determinations, orders or other actions subject to arbitration, then arbitration shall be a condition precedent to any right of legal action. Either side of a tie vote may, upon request, submit the question to arbitration. If there shall be arbitration, there shall be three arbitrators: one named in writing by each side, and the third chosen by the two arbitrators so elected. If the arbitrators fail to select a third within ten days, then he shall be chosen by the Representative of the United States.

(k) The salaries, if any, and the personal expenses of each member of the Administration, shall be paid by the Government which he represents. All other expenses incident to the administration of this Compact and which are not paid by the United States shall be borne equally by the States. Ninety days prior to the Regular Session of the Legislature of either State, the Administration shall adopt and transmit to the Governor of such State for his approval, its budget covering anticipated expenses for the forthcoming biennium and the amount thereof payable by such State. Upon approval by its Governor, each State shall appropriate and pay the amount due by it to the Administration. The Administration shall keep accurate accounts of all receipts and disbursements and shall include a statement thereof, together with a certificate of audit by a certified public accountant, in its annual report. Each State shall

have the right to make an examination and audit of the accounts of the Administration at any time.

(l) The Administration shall, whenever requested, provide access to its records by the Governor of either State or by the chief official of either State charged therein with the administration of water rights. The Administration shall annually on or before January 15th of each year make and transmit to the Governors of the signatory States, and to the President of the United States, a report of the Administration's activities and deliberations for the preceding year.

ARTICLE VIII

(a) This Compact shall become effective when ratified by the Legislature and approved by the Governors of both States and when approved by the Congress of the United States.

(b) The provisions of this Compact shall remain in full force and effect until modified, altered or amended, or in the same manner as hereinabove required for ratification thereof. The right so to modify, alter or amend this Compact is expressly reserved. This Compact may be terminated at any time by mutual consent of the signatory States. In the event this Compact is terminated as herein provided, all rights then vested hereunder shall continue unimpaired.

(c) Should a court of competent jurisdiction hold any part of this Compact to be contrary to the constitution of any signatory State or of the United States of America, all other severable provisions of this Compact shall continue in full force and effect.

ARTICLE IX

This Compact is made and entered into for the sole purpose of effecting an equitable apportionment and providing beneficial uses of the waters of the Sabine River, its tributaries and its watershed, without regard to the boundary between Louisiana and Texas, and nothing herein contained shall be construed as an admission on the part of either State or any agency, commission, department or subdivision thereof, respecting the location of said boundary; and neither this Compact nor any data compiled for the preparation or administration thereof shall be offered, admitted or considered in evidence, in any dispute, controversy, or litigation bearing upon the matter of the location of said boundary.

The term "Stateline" as defined in this Compact shall not be construed to define the actual boundary between the State of Texas and the State of Louisiana.

ARTICLE X

Nothing in this Compact shall be construed as affecting, in any manner, any present or future rights or powers of the United States, its agencies, or instrumentalities in, to and over the waters of the Sabine River Basin.

IN WITNESS WHEREOF, the Representatives have executed this Compact in three counterparts hereof, each of which shall be and constitute an original, one of which shall be forwarded to the Administrator, General Services Administration of the United States of America and one of which shall be forwarded to the Governor of each State.

DONE in the City of Logansport, in the State of Louisiana, this 26th day of January, 1953.

(SIGNED-- Henry L. Woodworth)
HENRY L. WOODWORTH,
Representative for the
State of Texas

(SIGNED-- John W. Simmons)
JOHN W. SIMMONS,
Representative for the
State of Texas

(SIGNED-- Roy T. Sessums)
ROY T. SESSUMS,
Representative for the
State of Louisiana

APPROVED:
(SIGNED--Louis W. Prentiss)
LOUIS W. PRENTISS,
Representative of the United States.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1973, 63rd Leg., p. 824, ch. 374, Sec. 1, eff. June 12, 1973; Acts 1989, 71st Leg., ch. 885, Sec. 1, eff. June 14, 1989.

CHAPTER 46. RED RIVER COMPACT

Sec. 46.001. RATIFICATION. The Red River Compact, the text of which is set out in Section 46.013 of this code, is ratified and confirmed in all respects after having been signed at Denison Dam, on the Texas-Oklahoma border, on May 12, 1978, by John P. Saxton, commissioner for the State of Arkansas, Orville B. Saunders, commissioner for the State of Oklahoma, Arthur R. Theis, commissioner for the State of Louisiana, and Fred Parkey, commissioner for the State of Texas, and approved by R. C. Marshall, representative of the United States.

Added by Acts 1979, 66th Leg., p. 551, ch. 261, Sec. 1, eff. May 24, 1979.

Sec. 46.002. ORIGINAL COPY. An original copy of the compact is on file in the office of the secretary of state.

Added by Acts 1979, 66th Leg., p. 551, ch. 261, Sec. 1, eff. May 24, 1979.

Sec. 46.003. COMMISSIONER. The governor, with the advice and consent of the senate, shall appoint a commissioner to represent this state on the commission established by Article IX of the compact.

Added by Acts 1979, 66th Leg., p. 551, ch. 261, Sec. 1, eff. May 24, 1979.

Sec. 46.004. TERM OF OFFICE. The appointed commissioner holds office for a term of six years and until his or her successor is appointed and qualified.

Added by Acts 1979, 66th Leg., p. 551, ch. 261, Sec. 1, eff. May 24, 1979. Amended by Acts 1985, 69th Leg., ch. 608, Sec. 2.

Sec. 46.005. OATH. The appointed commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform his or her duties as commissioner.

Added by Acts 1979, 66th Leg., p. 551, ch. 261, Sec. 1, eff. May 24, 1979.

Sec. 46.006. COMPENSATION; EXPENSES. (a) The appointed commissioner is entitled to receive as compensation $15,600 a year until otherwise provided by legislative appropriation and is entitled to reimbursement for actual and necessary expenses while traveling in the discharge of official duties.

(b) Repealed by Acts 1985, 69th Leg., ch. 608, Sec. 3, eff. Sept. 1, 1985.

Added by Acts 1979, 66th Leg., p. 551, ch. 261, Sec. 1, eff. May 24, 1979. Amended by Acts 1985, 69th Leg., ch. 608, Sec. 3, eff. Sept. 1, 1985.

Sec. 46.007. POWERS AND DUTIES. The appointed commissioner is responsible for administering the provisions of the compact and has all the powers and duties prescribed by the compact.

Added by Acts 1979, 66th Leg., p. 551, ch. 261, Sec. 1, eff. May 24, 1979.

Sec. 46.0071. NOTICE OF COMPACT MEETINGS. For informational purposes, the commissioner shall file with the secretary of state notice of compact meetings for publication in the Texas Register.

Added by Acts 1985, 69th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1985.

Sec. 46.008. EXECUTIVE DIRECTOR. (a) The executive director of the Texas Natural Resource Conservation Commission or a designated representative selected from the staff of the Texas Natural Resource Conservation Commission shall also serve as a commissioner and represent this state on the commission established by Article IX of the compact.

(b) The executive director or the designated representative may exercise the powers and shall discharge the duties provided by the compact.

(c) The executive director or the designated representative is not entitled to additional compensation for performing the duties under the compact but is entitled to reimbursement for actual and necessary expenses incurred while traveling in the discharge of official duties.

Added by Acts 1979, 66th Leg., p. 551, ch. 261, Sec. 1, eff. May 24, 1979. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.136, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 11.318, eff. Sept. 1, 1995.

Sec. 46.009. EMPLOYEES; ADMINISTRATIVE EXPENSES. The commissioners, in conjunction with other members of the commission and as authorized by the legislature, may employ engineering and clerical personnel and may incur necessary office expenses for the appointed commissioner and other expenses incident to the proper performance of their duties and the proper administration of the compact. However, the commissioner shall not incur any financial obligation on behalf of this state until the legislature has authorized and appropriated money for the obligation.

Added by Acts 1979, 66th Leg., p. 551, ch. 261, Sec. 1, eff. May 24, 1979.

Sec. 46.010. COOPERATION OF TEXAS NATURAL RESOURCE CONSERVATION COMMISSION. The Texas Natural Resource Conservation Commission shall cooperate with the commissioners in the performance of their duties and shall furnish them any factual data and information that are available.

Added by Acts 1979, 66th Leg., p. 551, ch. 261, Sec. 1, eff. May 24, 1979. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.137, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 11.319, eff. Sept. 1, 1995.

Sec. 46.011. NOTIFICATION OF OTHER PARTIES; COPIES. The governor shall notify the Governor of Arkansas, the Governor of Louisiana, the Governor of Oklahoma, and the President of the United

States of the ratification of the compact by this state. On request of the governor, the secretary of state shall furnish to each of these other governors and the president a certified copy of the Act adopting this chapter of the code.

Added by Acts 1979, 66th Leg., p. 551, ch. 261, Sec. 1, eff. May 24, 1979.

Sec. 46.012. TIME WHEN COMPACT BINDING. The compact is binding and obligatory when it is ratified by the legislatures of Arkansas, Louisiana, and Oklahoma and consented to by the United States under Article XIII of the compact.

Added by Acts 1979, 66th Leg., p. 551, ch. 261, Sec. 1, eff. May 24, 1979.

Sec. 46.013. TEXT OF COMPACT. The Red River Compact reads as follows:

"PREAMBLE

"The States of Arkansas, Louisiana, Oklahoma, and Texas, pursuant to the acts of their respective Governors or legislatures, or both, being moved by considerations of interstate comity, have resolved to compact with respect to the water of the Red River and its tributaries. By Act of Congress, Public Law No. 346 (84th Congress, First Session), the consent of the United States has been granted for said states to negotiate and enter into a compact providing for an equitable apportionment of such water; and pursuant to that Act the President has designated the representative of the United States.

"Further, the consent of Congress has been given for two or more states to negotiate and enter into agreements relating to water pollution control by the provisions of the Federal Water Pollution Control Act (P.L. 92-500, 33 U.S.C. Subsection 1251 et seq.).

"The Signatory States acting through their duly authorized Compact Commissioners, after several years of negotiations, have agreed to an equitable apportionment of the water of the Red River and its tributaries and do hereby submit and recommend that this compact be adopted by the respective legislatures and approved by Congress as hereinafter set forth:

"ARTICLE I

"PURPOSES

"Sec. 1.01. The principal purposes of this Compact are:

"(a) To promote interstate comity and remove causes of controversy between each of the affected states by governing the use, control and distribution of the interstate water of the Red River and its tributaries;

"(b) To provide an equitable apportionment among the Signatory States of the water of the Red River and its tributaries;

"(c) To promote an active program for the control and alleviation of natural deterioration and pollution of the water of the Red River Basin and to provide for enforcement of the laws related thereto;

"(d) To provide the means for an active program for the conservation of water, protection of lives and property from floods, improvement of water quality, development of navigation and regulation of flows in the Red River Basin; and

"(e) To provide a basis for state or joint state planning and action by ascertaining and identifying each state's share in the interstate water of the Red River Basin and the apportionment thereof.

"ARTICLE II

"GENERAL PROVISIONS

"Sec. 2.01. Each Signatory State may use the water allocated to it by this Compact in any manner deemed beneficial by that state. Each state may freely administer water rights and uses in accordance with the laws of that state, but such uses shall be subject to the availability of water in accordance with the apportionments made by this Compact.

"Sec. 2.02. The use of water by the United States in connection with any individual Federal project shall be in accordance with the Act of Congress authorizing the project and the water shall be charged to the state or states receiving the benefit therefrom.

"Sec. 2.03. Any Signatory State using the channel of Red River or its tributaries to convey stored water shall be subject to an appropriate reduction in the amount which may be withdrawn at the point of removal to account for transmission losses.

"Sec. 2.04. The failure of any state to use any portion of the water allocated to it shall not constitute relinquishment or forfeiture of the right to such use.

"Sec. 2.05. Each Signatory State shall have the right to:

"(a) Construct conservation storage capacity for the impoundment of water allocated by this Compact;

"(b) Replace within the same area any storage capacity recognized or authorized by this Compact made unusable by any cause, including losses due to sediment storage;

"(c) Construct reservoir storage capacity for the purposes of flood and sediment control as well as storage of water which is either imported or is to be exported if such storage does not adversely affect the delivery of water apportioned to any other Signatory State; and

"(d) Use the bed and banks of the Red River and its tributaries to convey stored water, imported or exported water, and water apportioned according to this Compact.

"Sec. 2.06. Signatory States may cooperate to obtain construction of facilities of joint benefits to such states.

"Sec. 2.07. Nothing in this Compact shall be deemed to impair or affect the powers, rights, or obligations of the United States, or those claiming under its authority, in, over and to water of the Red River Basin.

"Sec. 2.08. Nothing in this Compact shall be construed to include within the water apportioned by this Compact any water consumed in each state by livestock or for domestic purposes; provided, however, the storage of such water is in accordance with the laws of the respective states but any such impoundment shall not exceed 200 acre-feet, or such smaller quantity as may be provided for by the laws of each state.

"Sec. 2.09. In the event any state shall import water into the Red River Basin from any other river basin, the Signatory State making the importation shall have the use of such imported water.

"Sec. 2.10. Nothing in this Compact shall be deemed to:

"(a) Interfere with or impair the right or power of any Signatory State to regulate within its boundaries the appropriation, use, and control of water, or quality of water, not inconsistent with its obligations under this Compact;

"(b) Repeal or prevent the enactment of any legislation or the enforcement of any requirement by any Signatory State imposing any additional conditions or restrictions to further lessen or prevent the pollution or natural deterioration of water within its jurisdiction; provided nothing contained in this paragraph shall

alter any provision of this Compact dealing with the apportionment of water or the rights thereto; or

"(c) Waive any state's immunity under the Eleventh Amendment of the Constitution of the United States, or as constituting the consent of any state to be sued by its own citizens.

"Sec. 2.11. Accounting for apportionment purposes on interstate streams shall not be mandatory under the terms of the Compact until one or more affected states deem the accounting necessary.

"Sec. 2.12. For the purposes of apportionment of the water among the Signatory States, the Red River is hereby divided into the following major subdivisions:

"(a) Reach I--the Red River and tributaries from the New Mexico-Texas state boundary to Denison Dam;

"(b) Reach II--the Red River from Denison Dam to the point where it crosses the Arkansas-Louisiana state boundary and all tributaries which contribute to the flow of the River within this reach;

"(c) Reach III--the tributaries west of the Red River which cross the Texas-Louisiana state boundary, the Arkansas-Louisiana state boundary, and those which cross both the Texas-Arkansas state boundary and the Arkansas-Louisiana state boundary.

"(d) Reach IV--the tributaries east of the Red River in Arkansas which cross the Arkansas-Louisiana state boundary; and

"(e) Reach V--that portion of the Red River and tributaries in Louisiana not included in Reach III or in Reach IV.

"Sec. 2.13. If any part or application of this Compact shall be declared invalid by a court of competent jurisdiction, all other severable provisions and applications of this Compact shall remain in full force and effect.

"Sec. 2.14. Subject to the availability of water in accordance with this Compact, nothing in this Compact shall be held or construed to alter, impair, or increase, validate, or prejudice any existing water right or right of water use that is legally recognized on the effective date of this Compact by either statutes or courts of the Signatory State within which it is located.

"ARTICLE III

"DEFINITIONS

"Sec. 3.01. In this Compact:

"(a) The States of Arkansas, Louisiana, Oklahoma, and Texas are referred to as 'Arkansas,' 'Louisiana,' 'Oklahoma,' and 'Texas,' respectively, or individually as 'State' or 'Signatory State,' or

collectively as 'States' or 'Signatory States.'

"(b) The term 'Red River' means the stream below the crossing of the Texas-Oklahoma state boundary at longitude 100 degrees west.

"(c) The term 'Red River Basin' means all of the natural drainage area of the Red River and its tributaries east of the New Mexico-Texas state boundary and above its junction with Atchafalaya and Old Rivers.

"(d) The term 'water of the Red River Basin' means the water originating in any part of the Red River Basin and flowing to or in the Red River or any of its tributaries.

"(e) The term 'tributary' means any stream which contributes to the flow of the Red River.

"(f) The term 'interstate tributary' means a tributary of the Red River, the drainage area of which includes portions of two or more Signatory States.

"(g) The term 'intrastate tributary' means a tributary of the Red River, the drainage area of which is entirely within a single Signatory State.

"(h) The term 'Commission' means the agency created by Article IX of this Compact for the administration thereof.

"(i) The term 'pollution' means the alteration of the physical, chemical, or biological characteristics of water by the acts or instrumentalities of man which create or are likely to result in a material and adverse effect upon human beings, domestic or wild animals, fish and other aquatic life, or adversely affect any other lawful use of such water; provided, that for the purposes of this Compact, 'pollution' shall not mean or include 'natural deterioration.'

"(j) The term 'natural deterioration' means the material reduction in the quality of water resulting from the leaching of solubles from the soils and rocks through or over which the water flows naturally.

"(k) The term 'designated water' means water released from storage, paid for by non-Federal interests, for delivery to a specific point of use or diversion.

"(l) The term 'undesignated water' means all water released from storage other than 'designated water.'

"(m) The term 'conservation storage capacity' means that portion of the active capacity of reservoirs available for the storage of water for subsequent beneficial use, and it excludes any portion of

the capacity of reservoirs allocated solely to flood control and sediment control, or either of them.

"(n) The term 'runoff' means both the portion of precipitation which runs off the surface of a drainage area and that portion of the precipitation that enters the streams after passing through the portions of the earth.

"Subdivision of Reach I and apportionment of water therein. Reach I of the Red River is divided into topographical subbasins, with the water therein allocated as follows:

"ARTICLE IV

"APPORTIONMENT OF WATER--REACH I

"OKLAHOMA--TEXAS

"Sec. 4.01. Subbasin 1--Interstate streams--Texas.

"(a) This includes the Texas portion of Buck Creek, Sand (Lebos) Creek, Salt Fork Red River, Elm Creek, North Fork Red River, Sweetwater Creek, and Washita River, together with all their tributaries in Texas which lie west of the 100th Meridian.

"(b) The annual flow within this subbasin is hereby apportioned sixty (60) percent to Texas and forty (40) percent to Oklahoma.

"Sec. 4.02. Subbasin 2--Intrastate and Interstate streams--Oklahoma.

"(a) This subbasin is composed of all tributaries of the Red River in Oklahoma and portions thereof upstream to the Texas-Oklahoma state boundary at longitude 100 degrees west, beginning from Denison Dam and upstream to and including Buck Creek.

"(b) The State of Oklahoma shall have free and unrestricted use of the water of this subbasin.

"Sec. 4.03. Subbasin 3--Intrastate streams--Texas.

"(a) This includes the tributaries of the Red River in Texas, beginning from Denison Dam and upstream to and including Prairie Dog Town Fork Red River.

"(b) The State of Texas shall have free and unrestricted use of the water in this subbasin.

"Sec. 4.04. Subbasin 4--Mainstem of the Red River and Lake Texoma.

"(a) This subbasin includes all of Lake Texoma and the Red River beginning at Denison Dam and continuing upstream to the Texas-Oklahoma state boundary at longitude 100 degrees west.

"(b) The storage of Lake Texoma and flow from the mainstem of the Red River into Lake Texoma is apportioned as follows:

"(1) Oklahoma 200,000 acre-feet and Texas 200,000 acre-feet, which quantities shall include existing allocations and uses; and

"(2) Additional quantities in a ratio of fifty (50) percent to Oklahoma and fifty (50) percent to Texas.

"Sec. 4.05. Special Provisions.

"(a) Texas and Oklahoma may construct, jointly or in cooperation with the United States, storage or other facilities for the conservation and use of water; provided that any facilities constructed on the Red River boundary between the two states shall not be inconsistent with the Federal legislation authorizing Denison Dam and Reservoir project.

"(b) Texas shall not accept for filing, or grant a permit, for the construction of a dam to impound water solely for irrigation, flood control, soil conservation, mining and recovery of minerals, hydroelectric power, navigation, recreation and pleasure, or for any other purpose other than for domestic, municipal, and industrial water supply, on the mainstem of the North Fork Red River or any of its tributaries within Texas above Lugert-Altus Reservoir until the date that imported water, sufficient to meet the municipal and irrigation needs of Western Oklahoma is provided, or until January 1, 2000, which ever occurs first.

"Subdivision of Reach II and allocation of water therein. Reach II of the Red River is divided into topographic subbasins, and the water therein is allocated as follows:

"ARTICLE V

"APPORTIONMENT OF WATER--REACH II

"ARKANSAS, OKLAHOMA, TEXAS AND LOUISIANA

"Sec. 5.01. Subbasin 1--Intrastate streams--Oklahoma.

"(a) This subbasin includes those streams and their tributaries above existing, authorized or proposed last downstream major damsites, wholly in Oklahoma and flowing into Red River below Denison Dam and above the Oklahoma-Arkansas state boundary. These streams and their tributaries with existing, authorized or proposed last downstream major damsites are as follows:

			Location	
Stream	Site	Ac-ft	Latitude	Longitude
Island-Bayou	Albany	85,200	33°51.5'N	96°11.4'W
Blue River	Durant	147,000	33°55.5'N	96°04.2'W
Boggy River	Boswell	1,243,800	34°01.6'N	95°45.0'W
Kiamichi River	Hugo	240,700	34°01.0'N	95°22.6'W

"(b) Oklahoma is apportioned the water of this subbasin and shall have unrestricted use thereof.

"Sec. 5.02. Subbasin 2--Intrastate streams--Texas.

"(a) This subbasin includes those streams and their tributaries above existing authorized or proposed last downstream major damsites, wholly in Texas and flowing into Red River below Denison Dam and above the Texas-Arkansas state boundary. These streams and their tributaries with existing, authorized or proposed last downstream major damsites are as follows:

			Location	
Stream	Site	Ac-ft	Latitude	Longitude
Shawnee Creek	Randall Lake	5,400	33°48.1'N	96°34.8'W
Brushy Creek	Valley Lake	15,000	33°38.7'N	96°21.5'W
Bois d'Arc Creek	New Bonham Reservoir	130,600	33°42.9'N	95°58.2'W
Coffee Mill Creek	Coffee Mill Lake	8,000	33°44.1'N	95°58.0'W
Sandy Creek	Lake Crockett	3,900	33°44.5'N	95°55.5'W
Sanders Creek	Pat Mayse	124,500	33°51.2'N	95°32.9'W
Pine Creek	Lake Crook	11,011	33°43.7'N	95°34.0'W
Big Pine Creek	Big Pine Lake	138,600	33°52.0'N	95°11.7'W
Pecan Bayou	Pecan Bayou	625,000	33°41.1'N	94°58.7'W
Mud Creek	Liberty Hill	97,700	33°33.0'N	94°29.3'W
Mud Creek	KVW Ranch Lakes(3)	3,440	33°34.8'N	94°27.3'W

"(b) Texas is apportioned the water of this subbasin and shall have unrestricted use thereof.

"Sec. 5.03. Subbasin 3--Interstate streams--Oklahoma and Arkansas.

"(a) This subbasin includes Little River and its tributaries above Millwood Dam.

"(b) The States of Oklahoma and Arkansas shall have free and unrestricted use of the water of this subbasin within their respective states, subject, however, to the limitation that Oklahoma shall allow a quantity of water equal to 40 percent of the total

runoff originating below the following existing, authorized or proposed last downstream major damsites in Oklahoma to flow into Arkansas:

			Location	
Stream	Site	Ac-ft	Latitude	Longitude
Little River	Pine Creek	70,500	34°06.8'N	95°04.9'W
Glover Creek	Lukfata	258,600	34°08.5'N	94°55.4'W
Mountain Fork River	Broken Bow	470,100	34°08.9'N	94°41.2'W

"(c) Accounting will be on an annual basis unless otherwise deemed necessary by the States of Arkansas and Oklahoma.

"Sec. 5.04. Subbasin 4--Interstate streams--Texas and Arkansas.

"(a) This subbasin shall consist of those streams and their tributaries above existing, authorized or proposed last downstream major damsites, originating in Texas and crossing the Texas-Arkansas state boundary before flowing into the Red River in Arkansas. These streams and their tributaries with existing, authorized or proposed last downstream major damsites are as follows:

			Location	
Stream	Site	Ac-ft	Latitude	Longitude
McKinney Bayou Trib.	Bringle Lake	3,052	33°30.6'N	94°06.2'W
Barkman Creek	Barkman Reservoir	15,900	33°29.7'N	94°10.3'W
Sulphur River	Texarkana	386,900	33°18.3'N	94°09.6'W

"(b) The State of Texas shall have the free and unrestricted use of the water of this subbasin.

"Sec. 5.05. Subbasin 5--Mainstem of the Red River and tributaries.

"(a) This subbasin includes that portion of the Red River, together with its tributaries, from Denison Dam down to the Arkansas-Louisiana state boundary, excluding all tributaries included in the other four subbasins of Reach II.

"(b) Water within this subbasin is allocated as follows:

"(1) The Signatory States shall have equal rights to the use of runoff originating in subbasin 5 and undesignated water flowing into subbasin 5, so long as the flow of the Red River at the Arkansas-

Louisiana state boundary is 3,000 cubic feet per second or more, provided no state is entitled to more than 25 percent of the water in excess of 3,000 cubic feet per second.

"(2) Whenever the flow of the Red River at the Arkansas-Louisiana state boundary is less than 3,000 cubic feet per second, but more than 1,000 cubic feet per second, the States of Arkansas, Oklahoma, and Texas shall allow to flow into the Red River for delivery to the State of Louisiana a quantity of water equal to 40 percent of the total weekly runoff originating in subbasin 5 and 40 percent of undesignated water flowing into subbasin 5; provided, however, that this requirement shall not be interpreted to require any state to release stored water.

"(3) Whenever the flow of the Red River at the Arkansas-Louisiana state boundary falls below 1,000 cubic feet per second, the States of Arkansas, Oklahoma, and Texas shall allow a quantity of water equal to all the weekly runoff originating in subbasin 5 and all undesignated water flowing into subbasin 5 within their respective states to flow into the Red River as required to maintain a 1,000 cubic foot per second flow at the Arkansas-Louisiana state boundary.

"(c) Whenever the flow at Index, Arkansas, is less than 526 c.f.s., the states of Oklahoma and Texas shall each allow a quantity of water equal to 40 percent of the total weekly runoff originating in subbasin 5 within their respective states to flow into the Red River; provided however, this provision shall be invoked only at the request of Arkansas, only after Arkansas has ceased all diversions from the Red River itself in Arkansas above Index, and only if the provisions of Sub-sections 5.05(b)(2) and (3) have not caused a limitation of diversions in subbasin 5.

"(d) No state guarantees to maintain a minimum low flow to a downstream state.

"Sec. 5.06. Special Provisions.

"(a) Reservoirs within the limits of Reach II, subbasin 5, with a conservation storage capacity of 1,000 acre feet or less in existence or authorized on the date of the Compact pursuant to the rights and privileges granted by a Signatory State authorizing such reservoirs, shall be exempt from the provisions of Section 5.05; provided, if any right to store water in, or use water from, an existing exempt reservoir expires or is cancelled after the effective date of the Compact the exemption for such rights provided by this

section shall be lost.

"(b) A Signatory State may authorize a change in the purpose or place of use of water from a reservoir exempted by subparagraph (a) of this section without losing that exemption, if the quantity of authorized use and storage is not increased.

"(c) Additionally, exemptions from the provisions of Section 5.05 shall not apply to direct diversions from Red River to off-channel reservoirs or lands.

"Subdivision of Reach III and allocation of water therein. Reach III of the Red River is divided into topographic subbasins, and the water therein allocated, as follows:

"ARTICLE VI

"APPORTIONMENT OF WATER--REACH III

"ARKANSAS, LOUISIANA, AND TEXAS

"Sec. 6.01. Subbasin 1--Interstate streams--Arkansas and Texas.

"(a) This subbasin includes the Texas portion of those streams crossing the Arkansas-Texas state boundary one or more times and flowing through Arkansas into Cypress Creek-Twelve Mile Bayou watershed in Louisiana.

"(b) Texas is apportioned sixty (60) percent of the runoff of this subbasin and shall have unrestricted use thereof; Arkansas is entitled to forty (40) percent of the runoff of this subbasin.

"Sec. 6.02. Subbasin 2--Interstate streams--Arkansas and Louisiana.

"(a) This subbasin includes the Arkansas portion of those streams flowing from Subbasin 1 into Arkansas, as well as other streams in Arkansas which cross the Arkansas-Louisiana state boundary one or more times and flow into Cypress Creek-Twelve Mile Bayou watershed in Louisiana.

"(b) Arkansas is apportioned sixty (60) percent of the runoff of this subbasin and shall have unrestricted use thereof; Louisiana is entitled to forty (40) percent of the runoff of this subbasin.

"Sec. 6.03. Subbasin 3--Interstate streams--Texas and Louisiana.

"(a) This subbasin includes the Texas portion of all tributaries crossing the Texas-Louisiana state boundary one or more times and flowing into Caddo Lake, Cypress Creek-Twelve Mile Bayou or Cross Lake, as well as the Louisiana portion of such tributaries.

"(b) Texas and Louisiana within their respective boundaries shall each have the unrestricted use of the water of this subbasin subject to the following allocation:

"(1) Texas shall have the unrestricted right to all water above Marshall, Lake O' the Pines, and Black Cypress damsites; however, Texas shall not cause runoff to be depleted to a quantity less than that which would have occurred with the full operation of Franklin County, Titus County, Ellison Creek, Johnson Creek, Lake O' the Pines, Marshall, and Black Cypress Reservoirs constructed, and those other impoundments and diversions existing on the effective date of this Compact. Any depletions of runoff in excess of the depletions described above shall be charged against Texas' apportionment of the water in Caddo Reservoir.

"(2) Texas and Louisiana shall each have the unrestricted right to use fifty (50) percent of the conservation storage capacity in the present Caddo Lake for the impoundment of water for state use, subject to the provision that supplies for existing uses of water from Caddo Lake, on date of Compact, are not reduced.

"(3) Texas and Louisiana shall each have the unrestricted right to fifty (50) percent of the conservation storage capacity of any future enlargement of Caddo Lake, provided, the two states may negotiate for the release of each state's share of the storage space on terms mutually agreed upon by the two states after the effective date of this Compact.

"(4) Inflow to Caddo Lake from its drainage area downstream from Marshall, Lake O' the Pines, and Black Cypress damsites and downstream from other last downstream dams in existence on the date of the signing of the Compact document by the Compact Commissioners, will be allowed to continue flowing into Caddo Lake except that any manmade depletions to this inflow by Texas will be subtracted from the Texas share of the water in Caddo Lake.

"(c) In regard to the water of interstate streams which do not contribute to the inflow to Cross Lake or Caddo Lake, Texas shall have the unrestricted right to divert and use this water on the basis of a division of runoff above the state boundary of sixty (60) percent to Texas and forty (40) percent to Louisiana.

"(d) Texas and Louisiana will not construct improvements on the Cross Lake watershed in either state that will affect the yield of Cross Lake; provided, however, this subsection shall be subject to the provisions of Section 2.08.

"Sec. 6.04. Subbasin 4--Intrastate streams--Louisiana.

"(a) This subbasin includes that area of Louisiana in Reach III not included within any other subbasin.

"(b) Louisiana shall have free and unrestricted use of the water of this subbasin.

"Subdivision of Reach IV and allocation of water therein. Reach IV of the Red River is divided into topographic subbasins, and the water therein allocated as follows:

"ARTICLE VII

"APPORTIONMENT OF WATER--REACH IV

"ARKANSAS AND LOUISIANA

"Sec. 7.01. Subbasin 1--Intrastate streams--Arkansas.

"(a) This subbasin includes those streams and their tributaries above last downstream major damsites originating in Arkansas and crossing the Arkansas-Louisiana state boundary before flowing into the Red River in Louisiana. Those major last downstream damsites are as follows:

			Location	
Stream	Site	Ac-ft	Latitude	Longitude
Ouachita River	Lake Catherine	19,000	34°26.6'N	93°01.6'W
Caddo River	DeGray Lake	1,377,000	34°13.2'N	93°06.6'W
Little Missouri River	Lake Greeson	600,000	34°08.9'N	93°42.9'W
Alum Fork, Saline River	Lake Winona	63,264	32°47.8'N	92°51.0'W

"(b) Arkansas is apportioned the waters of this subbasin and shall have unrestricted use thereof.

"Sec. 7.02. Subbasin 2--Interstate Streams--Arkansas and Louisiana.

"(a) This subbasin shall consist of Reach IV less subbasin 1 as defined in Section 7.01(a) above.

"(b) The State of Arkansas shall have free and unrestricted use of the water of this reach subject to the limitation that Arkansas shall allow a quantity of water equal to forty (40) percent of the weekly runoff originating below or flowing from the last downstream major damsite to flow into Louisiana. Where there are no designated last downstream damsites, Arkansas shall allow a quantity of water equal to forty (40) percent of the total weekly runoff originating above the state boundary to flow into Louisiana. Use of water in this subbasin is subject to low flow provisions of subparagraph

7.02(b).

"Sec. 7.03. Special Provisions.

"(a) Arkansas may use the beds and banks of segments of Reach IV for the purpose of conveying its share of water to designated downstream diversions.

"(b) The State of Arkansas does not guarantee to maintain a minimum low flow for Louisiana in Reach IV. However, on the following streams when the use of water in Arkansas reduces the flow at the Arkansas-Louisiana state boundary to the following amounts:

"(1) Ouachita--780 cfs

"(2) Bayou Bartholomew--80 cfs

"(3) Boeuf River--40 cfs

"(4) Bayou Macon--40 cfs

the State of Arkansas pledges to take affirmative steps to regulate the diversions of runoff originating or flowing into Reach IV in such a manner as to permit an equitable apportionment of the runoff as set out herein to flow into the State of Louisiana. In its control and regulation of the water of Reach IV any adjudication or order rendered by the State of Arkansas or any of its instrumentalities or agencies affecting the terms of this Compact shall not be effective against the State of Louisiana nor any of its citizens or inhabitants until approved by the Commission.

"ARTICLE VIII

"APPORTIONMENT OF WATER--REACH V

"Sec. 8.01. Reach V of the Red River consists of the mainstem Red River and all of its tributaries lying wholly within the State of Louisiana. The State of Louisiana shall have free and unrestricted use of the water of this subbasin.

"ARTICLE IX

"ADMINISTRATION OF THE COMPACT

"Sec. 9.01. There is hereby created an interstate administrative agency to be known as the 'Red River Compact Commission,' hereinafter called the 'Commission.' The Commission shall be composed of two representatives from each Signatory State who shall be designated or appointed in accordance with the laws of each state, and one Commissioner representing the United States, who shall be appointed by the President. The Federal Commissioner shall be the Chairman of the Commission but shall not have the right to vote. The failure of the President to appoint a Federal Commissioner will not prevent the operation or effect of this Compact, and the eight representatives

from the Signatory States will elect a Chairman for the Commission.

"Sec. 9.02. The Commission shall meet and organize within 60 days after the effective date of this Compact. Thereafter, meetings shall be held at such times and places as the Commission shall decide.

"Sec. 9.03. Each of the two Commissioners from each state shall have one vote; provided, however, that if only one representative from a state attends he is authorized to vote on behalf of the absent Commissioner from that state. Representatives from three states shall constitute a quorum. Any action concerned with administration of this Compact or any action requiring compliance with specific terms of this Compact shall require six concurring votes. If a proposed action of the Commission affects existing water rights in a state, and that action is not expressly provided for in this Compact, eight concurring votes shall be required.

"Sec. 9.04.

"(a) The salaries and personal expenses of each state's representative shall be paid by the government that it represents, and the salaries and personal expenses of the Federal Commissioner will be paid for by the United States.

"(b) The Commission's expenses for any additional stream flow gaging stations shall be equitably apportioned among the states involved in the reach in which the stream flow gaging stations are located.

"(c) All other expenses incurred by the Commission shall be borne equally by the Signatory States and shall be paid by the Commission out of the 'Red River Compact Commission Fund.' Such Fund shall be initiated and maintained by equal payments of each state into the fund. Disbursement shall be made from the fund in such manner as may be authorized by the Commission. Such fund shall not be subject to audit and accounting procedures of the state; however, all receipts and disbursements of the fund by the Commission shall be audited by a qualified independent public accountant at regular intervals, and the report of such audits shall be included in and become a part of the annual report of the Commission. Each state shall have the right to make its own audit of the accounts of the Commission at any reasonable time.

"ARTICLE X

"POWERS AND DUTIES OF THE COMMISSION

"Sec. 10.01. The Commission shall have the power to:

"(a) Adopt rules and regulations governing its operation and enforcement of the terms of the Compact;

"(b) Establish and maintain an office for the conduct of its affairs and, if desirable, from time to time, change its location;

"(c) Employ or contract with such engineering, legal, clerical and other personnel as it may determine necessary for the exercise of its functions under this Compact without regard to the Civil Service Laws of any Signatory State; provided that such employees shall be paid by and be responsible to the Commission and shall not be considered employees of any Signatory State.

"(d) Acquire, use and dispose of such real and personal property as it may consider necessary;

"(e) Enter into contracts with appropriate State or Federal agencies for the collection, correlation and presentation of factual data, for the maintenance of records and for the preparation of reports;

"(f) Secure from the head of any department or agency of the Federal or State government such information as it may need or deem to be useful for carrying out its functions and as may be available to or procurable by the department or agency to which the request is addressed; provided such information is not privileged and the department or agency is not precluded by law from releasing same;

"(g) Make findings, recommendations or reports in connection with carrying out the purposes of this Compact, including, but not limited to, a finding that a Signatory State is or is not in violation of any of the provisions of this Compact. The Commission is authorized to make such investigations and studies, and to hold such hearings as it may deem necessary for said purposes. It is authorized to make and file official certified copies of any of its findings, recommendations or reports with such officers or agencies of any Signatory State, or the United States, as may have any interest in or jurisdiction over the subject matter. The making of findings, recommendations, or reports by the Commission shall not be a condition precedent to the instituting or maintaining of any action or proceeding of any kind by a Signatory State in any court or tribunal, or before any agency or officer, for the protection of any right under this Compact or for the enforcement of any of its provisions; and

"(h) Print or otherwise reproduce and distribute its proceedings and reports.

"Sec. 10.02. The Commission shall:

"(a) Cause to be established, maintained, and operated such stream, reservoir and other gaging stations as are necessary for the proper administration of the Compact;

"(b) Cause to be collected, analyzed and reported such information on stream flows, water quality, water storage and such other data as are necessary for the proper administration of the Compact;

"(c) Perform all other functions required of it by the Compact and do all things necessary, proper and convenient in the performance of its duties thereunder;

"(d) Prepare and submit to the governor of each of the Signatory States a budget covering the anticipated expenses of the Commission for the following fiscal biennium;

"(e) Prepare and submit an annual report to the governor of each Signatory State and to the President of the United States covering the activities of the Commission for the preceding fiscal year, together with an accounting of all funds received and expended by it in the conduct of its work;

"(f) Make available to the governor or to any official agency of a Signatory State or to any authorized representative of the United States, upon request, any information within its possession;

"(g) Not incur any obligation in excess of the unencumbered balance of its funds, nor pledge the credit of any of the Signatory States; and

"(h) Make available to a Signatory State or the United States in any action arising under this Compact, without subpoena, the testimony of any officer or employee of the Commission having knowledge of any relevant facts.

"ARTICLE XI

"POLLUTION

"Sec. 11.01. The Signatory States recognize that the increase in population and the growth of industrial, agricultural, mining and other activities combined with natural pollution sources may lead to a diminution of the quality of water in the Red River Basin which may render the water harmful or injurious to the health and welfare of the people and impair the usefulness or public enjoyment of the water for beneficial purposes, thereby resulting in adverse social, economic, and environmental impacts.

"Sec. 11.02. Although affirming the primary duty and

responsibility of each Signatory State to take appropriate action under its own laws to prevent, diminish, and regulate all pollution sources within its boundaries which adversely affect the water of the Red River Basin, the states recognize that the control and abatement of the naturally-occurring salinity sources as well as, under certain circumstances, the maintenance and enhancement of the quality of water in the Red River Basin may require the cooperative action of all states.

"Sec. 11.03. The Signatory States agree to cooperate with agencies of the United States to devise and effectuate means of alleviating the natural deterioration of the water of the Red River Basin.

"Sec. 11.04. The Commission shall have the power to cooperate with the United States, the Signatory States and other entities in programs for abating and controlling pollution and natural deterioration of the water of the Red River Basin, and to recommend reasonable water quality objectives to the states.

"Sec. 11.05. Each Signatory State agrees to maintain current records of waste discharges into the Red River Basin and the type and quality of such discharges, which records shall be furnished to the Commission upon request.

"Sec. 11.06. Upon receipt of a complaint from the governor of a Signatory State that the interstate water of the Red River Basin in which it has an interest are being materially and adversely affected by pollution and that the state in which the pollution originates has failed after reasonable notice to take appropriate abatement measures, the Commission shall make such findings as are appropriate and thereafter provide such findings to the governor of the state in which such pollution originates and request appropriate corrective action. The Commission, however, shall not take any action with respect to pollution which adversely affects only the state in which such pollution originates.

"Sec. 11.07. In addition to its other powers set forth under this Article, the Commission shall have the authority, upon receipt of six concurring votes, to utilize applicable Federal statutes to institute legal action in its own name against the person or entity responsible for interstate pollution problems; provided, however, sixty (60) days before initiating legal action the Commission shall notify the Governor of the state in which the pollution source is located to allow that state an opportunity to initiate action in its

own name.

"Sec. 11.08. Without prejudice to any other remedy available to the Commission, or any Signatory State, any state which is materially and adversely affected by the pollution of the water of the Red River Basin by pollution originating in another Signatory State may institute a suit against any individual, corporation, partnership, or association, or against any Signatory State or political or governmental subdivision thereof, or against any officer, agency, department, bureau, district or instrumentality of or in any Signatory State contributing to such pollution in accordance with applicable Federal statutes. Nothing herein shall be construed as depriving any persons of any rights of action relating to pollution which such person would have if this Compact had not been made.

"ARTICLE XII

"TERMINATION AND AMENDMENT OF COMPACT

"Sec. 12.01. This Compact may be terminated at any time by appropriate action of the legislatures of all of the four Signatory States. In the event of such termination, all rights established under it shall continue unimpaired.

"Sec. 12.02. This Compact may be amended at any time by appropriate action of the legislatures of all Signatory States that are affected by such amendment. The consent of the United States Congress must be obtained before any such amendment is effective.

"ARTICLE XIII

"RATIFICATION AND EFFECTIVE DATE OF COMPACT

"Sec. 13.01. Notice of ratification of this Compact by the legislature of each Signatory State shall be given by the governor thereof to the governors of each of the other Signatory States and to the President of the United States. The President is hereby requested to give notice to the governors of each of the Signatory States of the consent to this Compact by the Congress of the United States.

"Sec. 13.02. This Compact shall become effective, binding and obligatory when, and only when:

"(a) It has been duly ratified by each of the Signatory States; and

"(b) It has been consented to by an Act of the Congress of the United States, which Act provides that:

"Any other statute of the United States to the contrary notwithstanding, in any case or controversy:

"which involves the construction or application of this Compact;
"in which one or more of the Signatory States to this Compact is a plaintiff or plaintiffs; and
"which is within the judicial power of the United States as set forth in the Constitution of the United States;
"and without any requirement, limitation or regard as to the sum or value of the matter in controversy, or of the place of residence or citizenship of, or of the nature, character or legal status of, any of the other proper parties plaintiff or defendant in such case or controversy:
"The consent of Congress is given to name and join the United States as a party defendant or otherwise in any such case or controversy in the Supreme Court of the United States if the United States is an indispensable party thereto.

"Sec. 13.03. The United States District Courts shall have original jurisdiction (concurrent with that of the Supreme Court of the United States, and concurrent with that of any other Federal or state court, in matters in which the Supreme Court, or other court has original jurisdiction) of any case or controversy involving the application or construction of this Compact; that said jurisdiction shall include, but not be limited to, suits between Signatory States; and that the venue of such case or controversy may be brought in any judicial district in which the acts complained of (or any portion thereof) occur.

SIGNED AND APPROVED on the 12th day of May 1978 at Denison Dam.

John P. Saxton	Arthur R. Theis
John P. Saxton, Commissioner	Arthur R. Theis, Commissioner
State of Arkansas	State of Louisiana
Orville B. Saunders	Fred Parkey
Orville B. Saunders, Commissioner	Fred Parkey, Commissioner
State of Oklahoma	State of Texas

R.C. Marshall
R.C. MARSHALL, Major General
Representative
United States of America"

Added by Acts 1979, 66th Leg., p. 551, ch. 261, Sec. 1, eff. May 24, 1979.

TITLE 4. GENERAL LAW DISTRICTS
CHAPTER 49. PROVISIONS APPLICABLE TO ALL DISTRICTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 49.001. DEFINITIONS. (a) As used in this chapter:

(1) "District" means any district or authority created by authority of either Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, regardless of how created. The term "district" shall not include any navigation district or port authority created under general or special law, any conservation and reclamation district created pursuant to Chapter 62, Acts of the 52nd Legislature, 1951 (Article 8280-141, Vernon's Texas Civil Statutes), or any conservation and reclamation district governed by Chapter 36 unless a special law creating the district or amending the law creating the district states that this chapter applies to that district.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Board" means the governing body of a district.

(4) "Executive director" means the executive director of the commission.

(5) "Water supply corporation" means a nonprofit water supply or sewer service corporation created or operating under Chapter 67.

(6) "Director" means either a supervisor or director appointed or elected to the board.

(7) "Municipal solid waste" has the same meaning assigned by Section 361.003, Health and Safety Code.

(8) "Special water authority" means a river authority as that term is defined in Section 30.003, or a district created by a special Act of the legislature that:

(A) is a provider of water or wastewater service to two or more municipalities; and

(B) is governed by a board of directors appointed or designated in whole or in part by the governor, the Texas Water Development Board, or municipalities within its service area.

(9) "Potable water" means water that has been treated for

public drinking water supply purposes.

(10) "District facility" means tangible real and personal property of the district, including any plant, equipment, means, recreational facility as defined by Section 49.462, or instrumentality owned, leased, operated, used, controlled, furnished, or supplied for, by, or in connection with the business or operations of a district. The term specifically includes a reservoir or easement of a district.

(b) These definitions are for use in this chapter only and have no effect on any other statute or code unless specifically referenced by that statute or code.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.66, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1354, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 343, Sec. 1.

Sec. 49.002. APPLICABILITY. (a) Except as provided by Subsection (b), this chapter applies to all general and special law districts to the extent that the provisions of this chapter do not directly conflict with a provision in any other chapter of this code or any Act creating or affecting a special law district. In the event of such conflict, the specific provisions in such other chapter or Act shall control.

(b) This chapter does not apply to a district governed by Chapter 36 unless a special law creating the district or amending the law creating the district states that this chapter applies to that district.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1354, Sec. 5, eff. Sept. 1, 1999.

Sec. 49.003. PENALTY. A district that fails to comply with the filing provisions of this code may be subject to a civil penalty of up to $100 per day for each day the district wilfully continues to violate these provisions after receipt of written notice of violation from the executive director by certified mail, return receipt requested. The state may sue to recover the penalty.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.004. PENALTY FOR VIOLATION OF DISTRICT RULES. (a) The board may set reasonable civil penalties for the breach of any rule of the district that shall not exceed the jurisdiction of a justice court as provided by Section 27.031, Government Code.

(b) A penalty under this section is in addition to any other penalty provided by the law of this state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office or meeting place is located.

(c) If the district prevails in any suit to enforce its rules, it may, in the same action, recover reasonable fees for attorneys, expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER B. CREATION

Sec. 49.010. ORDER OR ACT CREATING DISTRICT. Within 60 days after the date a district is created, the district shall file with the executive director a certified copy of the order or legislative Act creating the district or authorizing its creation, unless the district was created by order of the commission.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.011. NOTICE APPLICABLE TO CREATION OF A DISTRICT BY THE COMMISSION. (a) On receipt by the commission of all required documentation associated with an application for creation of a district by the commission under Chapter 36, 50, 51, 54, 55, 58, 65, or 66, the commission shall issue a notice indicating that the application is administratively complete.

(b) The commission by rule shall establish a procedure for public notice and hearing of applications. The rules must require an applicant to publish the notice issued by the commission under Subsection (a) once a week for two consecutive weeks in a newspaper

regularly published or circulated in the county where the district is proposed to be located not later than the 30th day before the date on which the commission may act on the application.

(c) The commission may act on an application without holding a public hearing if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following the final publication of notice under Subsection (b).

(d) If the commission determines that a public hearing is necessary, the commission shall advise all parties of the time and place of the hearing. The commission is not required to provide public notice of a hearing under this section.

Added by Acts 1997, 75th Leg., ch. 1070, Sec. 2, eff. Sept. 1, 1997.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 49.051. BOARD OF DIRECTORS. A district shall be governed by its board, the number of which is otherwise provided by law.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.052. DISQUALIFICATION OF DIRECTORS. (a) A person is disqualified from serving as a member of a board of a district that includes less than all the territory in at least one county and which, if located within the corporate area of a city or cities, includes within its boundaries less than 75 percent of the incorporated area of the city or cities, if that person:

(1) is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board, or the manager, engineer, attorney, or other person providing professional services to the district;

(2) is an employee of any developer of property in the district or any director, manager, engineer, attorney, or other person providing professional services to the district or a developer of property in the district in connection with the district or property located in the district;

(3) is a developer of property in the district;

(4) is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the

district or a developer of property in the district in connection with the district or property located in the district;

(5)(A) is a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) is a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence, establishing a commercial business within the district, or qualifying as a director; or

(6) during the term of office, fails to maintain the qualifications required by law to serve as a director.

(b) Within 60 days after the board determines a relationship or employment exists which constitutes a disqualification under Subsection (a), it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who wilfully occupies an office as a member of a board and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) is guilty of a misdemeanor and, on conviction, shall be fined not less than $100 nor more than $1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

(f) This section shall not apply to special water authorities, districts described in Section 49.181(h)(1)(D), or a district where

the principal function of the district is to provide irrigation water to agricultural lands or to provide nonpotable water for any purpose.

(g) A board by unanimous vote of its remaining members may remove a board member only if that board member has missed one-half or more of the regular meetings scheduled during the prior 12 months. Any board member so removed may file a written appeal with the commission within 30 days after receiving written notice of the board action. The commission may reinstate a removed director if the commission finds that the removal was unwarranted under the circumstances, including the reasons for absences, the time and place of the meetings missed, the business conducted at the meetings missed, and any other facts or circumstances the commission may deem relevant.

(h) This subsection applies only to a district that is located wholly within the boundaries of a municipality with a population of more than 1.5 million, that is governed by Chapter 375, Local Government Code, and that is governed by an appointed board consisting of nine or more members. Notwithstanding Subsection (f) or (g), a person is considered to have resigned from serving as a member of the board if the person fails to attend three consecutive meetings of the board. The remaining board members by majority vote may waive the resignation under this subsection if fairness requires that the absences be excused on the basis of illness or other good cause.

(i) Notwithstanding any other law, a director is eligible to serve on the board of a district governed by Chapter 375, Local Government Code, regardless of the municipality in which the director resides, if:

(1) the district is located within the boundaries of a municipality with a population of more than 1.8 million; and

(2) all or a part of the district is located more than five miles from the downtown city hall of that municipality.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 248, Sec. 6, eff. June 18, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 156 (H.B. 1901), Sec. 2, eff. May 28, 2011.

Sec. 49.053. QUORUM. A majority of the membership of the board constitutes a quorum for any meeting, and a concurrence of a majority of the entire membership of the board is sufficient for transacting any business of the district. This section does not apply to special water authorities.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.054. OFFICERS. (a) After a district is created and the directors have qualified, the board shall meet, elect a president, vice-president, secretary, and any other officers or assistant officers as the board may deem necessary, and begin the discharge of its duties.

(b) After each directors election, the board shall meet and elect officers.

(c) The president is the chief executive officer of the district, presides at all meetings of the board, and shall execute all documents on behalf of the district unless the board by resolution authorizes the general manager or other employee of the district to execute a document or documents on behalf of the district. The vice-president shall act as president in case of the absence or disability of the president. The secretary is responsible for seeing that all records and books of the district are properly kept and may attest the president's signature on documents.

(d) Repealed by Acts 2003, 78th Leg., ch. 1276, Sec. 18.007.

(e) The board may appoint another director, the general manager, or any employee as assistant or deputy secretary to assist the secretary, and any such person shall be entitled to certify as to the authenticity of any record of the district, including but not limited to all proceedings relating to bonds, contracts, or indebtedness of the district.

(f) After any election or appointment of a director, a district shall notify the executive director within 30 days after the date of the election or appointment of the name and mailing address of the director chosen and the date that director's term of office expires. The executive director shall provide forms to the district for such purpose.

(g) This section does not apply to special water authorities.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1259, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1354, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 69, Sec. 5, eff. May 14, 2001; Acts 2001, 77th Leg., ch. 1423, Sec. 1, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 18.007, eff. Sept. 1, 2003.

Sec. 49.055. SWORN STATEMENT, BOND, AND OATH OF OFFICE. (a) As soon as practicable after a director is elected or appointed, that director shall make the sworn statement prescribed by the constitution for public office.

(b) As soon as practicable after a director has made the sworn statement, and before beginning to perform the duties of office, that director shall take the oath of office prescribed by the constitution for public officers.

(c) Before beginning to perform the duties of office, each director shall execute a bond for $10,000 payable to the district and conditioned on the faithful performance of that director's duties. All bonds of the directors shall be approved by the board and paid for by the district.

(d) The sworn statement shall be filed as prescribed by the constitution. The bond and oath shall be filed with the district and retained in its records. A duplicate original of the oath shall also be filed with the secretary of state within 10 days after its execution and need not be filed before the new director begins to perform the duties of office.

(e) This section does not apply to special water authorities.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 249, Sec. 2, eff. Aug. 30, 1999.

Sec. 49.056. GENERAL MANAGER. (a) The board may employ or contract with a person to perform such services as general manager for the district as the board may from time to time specify. The board may delegate to the general manager full authority to manage and operate the affairs of the district subject only to orders of the board.

(b) The board may delegate to the general manager the authority to employ all persons necessary for the proper handling of the

business and operation of the district and to determine the compensation to be paid all employees other than the general manager.

(c) Except as provided by Section 49.052, a director may be employed as general manager of the district, but the compensation of a general manager who also serves as a director shall be established by the other directors.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.057. MANAGEMENT OF DISTRICT. (a) The board shall be responsible for the management of all the affairs of the district. The district shall employ or contract with all persons, firms, partnerships, corporations, or other entities, public or private, deemed necessary by the board for the conduct of the affairs of the district, including, but not limited to, engineers, attorneys, financial advisors, operators, bookkeepers, tax assessors and collectors, auditors, and administrative staff.

(b) The board shall adopt an annual budget. The board of a developed district, as defined by Section 49.23602, shall include as an appendix to the budget the district's:

(1) audited financial statements;

(2) bond transcripts; and

(3) engineer's reports required by Section 49.106.

(b-1) All district employees are employed at the will of the district unless the district and employee execute a written employment contract.

(c) The board shall set the compensation and terms for consultants.

(d) In selecting attorneys, engineers, auditors, financial advisors, or other professional consultants, the district shall follow the procedures provided in Subchapter A, Chapter 2254, Government Code (Professional Services Procurement Act).

(e) Except as provided by Subsection (i), the board shall require an officer, employee, or consultant, including a bookkeeper, financial advisor, or system operator, who routinely collects, pays, or handles any funds of the district to furnish good and sufficient bond, payable to the district, in an amount determined by the board to be sufficient to safeguard the district. The board may require a consultant who does not routinely collect, pay, or handle funds of

the district to furnish a bond. The bond shall be conditioned on the faithful performance of that person's duties and on accounting for all funds and property of the district. Such bond shall be signed or endorsed by a surety company authorized to do business in the state.

(f) The board may pay the premium on surety bonds required of officials, employees, or consultants of the district out of any available funds of the district, including proceeds from the sale of bonds.

(g) The board may adopt bylaws to govern the affairs of the district to perform its purposes. The board may by resolution authorize its general manager or other employee to execute documents on behalf of the district.

(h) The board shall also have the right to purchase all materials, supplies, equipment, vehicles, and machinery needed by the district to perform its purposes.

(i) The board may obtain or require an officer, employee, or consultant of the district to obtain insurance or coverage under an interlocal agreement that covers theft of district funds by officers, employees, or consultants of the district in lieu of requiring a bond under Subsection (e) if the board determines that the insurance or coverage under an interlocal agreement would adequately protect the interests of the district.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1354, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 69, Sec. 2, eff. May 14, 2001; Acts 2001, 77th Leg., ch. 1423, Sec. 2, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 18.008, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 868 (S.B. 1045), Sec. 1, eff. June 17, 2005.

Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 85, eff. January 1, 2020.

Sec. 49.058. CONFLICTS OF INTEREST. A director of a district is subject to the provisions of Chapter 171, Local Government Code, relating to the regulation of conflicts of interest of officers of local governments.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.059. TAX ASSESSOR AND COLLECTOR. (a) A district may employ or contract with any person to serve as its tax assessor and collector who is:

(1) an individual certified as a registered Texas assessor-collector; or

(2) a firm, organization, association, partnership, corporation, or other legal entity if an individual certified as a registered Texas assessor-collector owns an interest in or is employed by the firm, organization, association, partnership, corporation, or other legal entity.

(b) A tax assessor and collector employed or contracted for under this section is not required to be a natural person.

(c) A firm, organization, association, partnership, corporation, or other legal entity serving as district tax assessor and collector shall give a bond as required by Section 49.057 for a natural person.

(d) No person may serve as tax assessor and collector of a district providing potable water or sewer utility services to household users if that person:

(1) is a natural person related within the third degree of affinity or consanguinity to any developer of property in the district, a member of the board, or the manager, engineer, or attorney for the district;

(2) is or was within two years immediately preceding the assumption of assessment and collection duties with the district an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) owns an interest in or is employed by any corporation organized for the purpose of tax assessment and collection services, a substantial portion of the stock of which is owned by a developer of property within the district or any director, manager, engineer, or attorney for the district; or

(4) is directly or through a corporation developing land in the district or is a director, engineer, or attorney for the district.

(e) Within 60 days after the board determines a relationship or employment exists which constitutes a disqualification under

Subsection (d), it shall replace the person serving as tax assessor and collector with a person who would not be disqualified.

(f) Any person who wilfully violates the provisions of Subsection (d) is guilty of a misdemeanor and on conviction shall be fined not less than $100 nor more than $1,000.

(g) As used in this section, "developer of property in the district" has the same meaning as in Section 49.052(d).

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 4, eff. September 1, 2013.

Sec. 49.060. FEES OF OFFICE; REIMBURSEMENT. (a) A director is entitled to receive fees of office of not more than $150 a day for each day the director actually spends performing the duties of a director. In this subsection, "performing the duties of a director" means substantive performance of the management or business of the district, including participation in board and committee meetings and other activities involving the substantive deliberation of district business and in pertinent educational programs. The phrase does not include routine or ministerial activities such as the execution of documents, self-preparation for meetings, or other activities requiring a minimal amount of time.

(a-1) A district, by resolution of the board, shall set a limit on the fees of office that a director may receive in a year. Except for a district that is a special water authority engaged in the distribution and sale of electric energy to the public, a district may not set the annual limit at an amount greater than $7,200.

(b) Each director is also entitled to receive reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the district.

(c) In order to receive fees of office and to receive reimbursement for expenses, each director shall file with the district a verified statement showing the number of days actually spent in the service of the district and a general description of the duties performed for each day of service.

(d) Repealed by Acts 2003, 78th Leg., ch. 736, Sec. 2.

(e) Section 49.002 notwithstanding, in all areas of conflict

the provisions of this section shall take precedence over all prior statutory enactments. If the enactment of this section results in an increase in the fees of office for any district, that district's fees of office shall not increase unless the board adopts a resolution authorizing payment of the higher fees.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 695, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1423, Sec. 3, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 736, Sec. 1, 2, eff. June 20, 2003.

Sec. 49.061. SEAL. The directors shall adopt a seal for the district.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.062. OFFICES AND MEETING PLACES. (a) The board shall designate from time to time and maintain one or more regular offices for conducting the business of the district and maintaining the records of the district. Such offices may be located either inside or outside the district's boundaries as determined in the discretion of the board.

(b) The board shall designate one or more places inside or outside the district for conducting the meetings of the board. The meeting place may be a private residence or office, provided that the board, in its order establishing the meeting place, declares the same to be a public place and invites the public to attend any meeting of the board. If the board establishes a meeting place or places outside the district, it shall give notice of the location or locations by filing a true copy of the resolution establishing the location or locations of the meeting place or places and a justification of why the meeting will not be held in the district or within 10 miles of the boundary of the district, if applicable, with the commission and also by publishing notice of the location or locations in a newspaper of general circulation in the district. If the location of any of the meeting places outside the district is changed, notice of the change shall be given in the same manner.

(c) After at least 50 qualified electors are residing in a district, on written request of at least five of those electors, the

board shall designate a meeting place and hold meetings within the district. If no suitable meeting place exists inside the district, the board may designate a meeting place outside the district that is located not further than 10 miles from the boundary of the district.

(c-1) On the failure, after a request is made under Subsection (c), of the board to designate the location of the meeting place within the district or not further than 10 miles from the boundary of the district, five electors may petition the commission to designate a location. If it determines that the meeting place used by the district deprives the residents of a reasonable opportunity to attend district meetings, the commission shall designate a meeting place inside or outside the district which is reasonably available to the public and require that the meetings be held at such place.

(d) Two or more districts may designate and share offices and meeting places. This section does not apply to special water authorities.

(e) After holding a meeting at a place designated under Subsection (c) or (c-1), the board may hold a hearing on the designation of a different meeting place, including a meeting place outside of the district. The board may hold meetings at the designated meeting place if, at the hearing, the board determines that the new meeting place is beneficial to the district and will not deprive the residents of the district of a reasonable opportunity to attend meetings. The board may not hold meetings at a meeting place outside the district or further than 10 miles from the boundaries of the district if the board receives a petition under Subsection (c-1).

(f) The commission shall make a determination under Subsection (c-1) not later than the 60th day after the date the commission receives the petition.

(g) The commission shall provide information on the commission's Internet website on the process for designation by the commission of a meeting place under Subsection (c-1) and a form that may be used to request that the commission make the designation with submission instructions.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 105 (S.B. 239), Sec. 3, eff. September 1, 2019.

Sec. 49.063. NOTICE OF MEETINGS. (a) Notice of meetings of the board shall be given as set forth in the open meetings law, Chapter 551, Government Code, except that if a district does not have a meeting place within the district, the district shall post notice of its meeting at a public place within the district specified by the board in a written resolution, rather than at its administrative office. The board shall specify such public place to be a bulletin board or other place within the district which is reasonably available to the public.

(b) The validity of an action taken at a board meeting is not affected by:

(1) failure to provide notice of the meeting if the meeting is a regular meeting;

(2) an insubstantial defect in notice of the meeting; or

(3) failure of a county clerk to timely or properly post or maintain public access to a notice of the meeting if notice of the meeting is furnished to the county clerk in sufficient time for posting under Section 551.043(a) or 551.045, Government Code.

(c) This subsection applies only to notice for the district's first meeting of each calendar year. A district that does not have a meeting place within the district shall include in the notice required under Subsection (a) a description of the petition process under Section 49.062(c).

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 5, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 907 (S.B. 554), Sec. 1, eff. September 1, 2017.

Sec. 49.0631. MEETING INFORMATION ON WATER BILL. A district providing potable water or sewer service shall as a part of the district's billing process include on a district's bill to a customer the following statement: "For more information about the district, including information about the district's board and board meetings, please go to the Comptroller's Special Purpose District Public Information Database or (district's Internet website if the district maintains an Internet website)." The statement may be altered to

provide the current Internet website address of either the database created under Section 403.0241, Government Code, or the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 105 (S.B. 239), Sec. 4, eff. September 1, 2019.

Sec. 49.064. MEETINGS. The board shall hold such regular and special meetings as may be necessary for the proper conduct of the district's business. All meetings shall be conducted in accordance with the open meetings law, Chapter 551, Government Code. A meeting of a committee of the board, or a committee composed of representatives of more than one board, where less than a quorum of any one board is present is not subject to the provisions of the open meetings law, Chapter 551, Government Code.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.065. RECORDS. (a) The board shall keep a complete account of all its meetings and proceedings and shall preserve its minutes, contracts, records, notices, accounts, receipts, and other records in a safe place.

(b) The records of each district are the property of the district and are subject to the open records law, Chapter 552, Government Code.

(c) The preservation, microfilming, destruction, or other disposition of the records of each district is subject to the requirements of Chapter 201, Local Government Code, and rules adopted under that chapter.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.066. SUITS. (a) A district may sue and be sued in the courts of this state in the name of the district by and through its board. A suit for contract damages may be brought against a district only on a written contract of the district approved by the district's board. All courts shall take judicial notice of the creation of the district and of its boundaries.

(b) Any court in the state rendering judgment for debt against

a district may order the board to levy, assess, and collect taxes or assessments to pay the judgment.

(c) The president or the general manager of any district shall be the agent of the district on whom process, notice, or demand required or permitted by law to be served upon the district may be served.

(d) Except as provided in Subsection (e), no suit may be instituted in any court of this state contesting:

(1) the validity of the creation and boundaries of a district created under this code;

(2) any bonds or other obligations created under this code; or

(3) the validity or the authorization of a contract with the United States by the district.

(e) The matters listed in Subsection (d) may be judicially inquired into at any time and determined in any suit brought by the State of Texas through the attorney general. The action shall be brought on good cause shown, except where otherwise provided by other provisions of this code or by the Texas Constitution. It is specifically provided, however, that no such proceeding shall affect the validity of or security for any bonds or other obligations theretofore issued by a district if such bonds or other obligations have been approved by the attorney general as provided by Section 49.184.

(f) A district or water supply corporation shall not be required to give bond for appeal, injunction, or costs in any suit to which it is a party and shall not be required to deposit more than the amount of any award in any eminent domain proceeding.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1354, Sec. 8, eff. Sept. 1, 1999.

Sec. 49.067. CONTRACTS. (a) A district shall contract, and be contracted with, in the name of the district.

(b) Notwithstanding any other law, a contract for technical, scientific, legal, fiscal, or other professional services must be approved by the board unless specifically delegated by board action. The terms and conditions of such a contract, including the terms for

payment, are subject to the decision of the board unless specifically delegated by board action. The board through such action cannot abrogate its fiscal responsibility.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 248, Sec. 7, eff. June 18, 2003.

Sec. 49.068. CONTRACTS WITH GOVERNMENTAL AGENCIES. (a) The provisions of this chapter pertaining to bids and the Local Government Code notwithstanding, a district may purchase property from any governmental entity by negotiated contract without the necessity of securing appraisals or advertising for bids.

(b) The provisions of other law or a home-rule municipal charter notwithstanding, a municipality may contract with a district. The term of a contract under this subsection may be of unlimited duration.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 248, Sec. 8, eff. June 18, 2003.

Sec. 49.069. EMPLOYEE BENEFITS. (a) The board may provide for and administer retirement, disability, and death compensation funds for the employees of the district.

(b) The board may establish a public retirement system in accordance with the provisions of Chapter 810, Government Code. The board may also provide for a deferred compensation plan described by Section 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 457).

(c) The board may include hospitalization and medical benefits to its employees as part of the compensation paid to the officers and employees and may adopt any plan, rule, or regulation in connection with it and amend or change the plan, rule, or regulation as it may determine.

(d) The board may establish a sick leave pool for employees of the district in the same manner as that authorized for the creation of a sick leave pool for state employees by Subchapter A, Chapter 661, Government Code.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 1354, Sec. 9, eff. Sept. 1, 1999.

Sec. 49.070. WORKERS' COMPENSATION. The board may become a subscriber under Title 5, Labor Code (Texas Workers' Compensation Act), with any insurance company authorized to write the policies in the State of Texas.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.071. DISTRICT NAME CHANGE. (a) On petition by a district showing reasonable grounds for a name change, the commission by order may change the name of the district to the name requested by the district. The new name must be generally descriptive of the location of the district followed by the type of district as provided by the title of the chapter of the Water Code governing the district. If a district is located wholly within one county that contains more than one district of that type, the district may be differentiated, if necessary, by adding to the new name the proper consecutive number. The new name may not be the same as the name of any other district in the county.

(b) A name change takes effect on the date of issuance of the commission order making the name change.

(c) Not later than the 30th day after the date of issuance of the commission order making the name change, the district shall publish notice of the name change in a newspaper or newspapers of general circulation in the county or counties in which the district is located. Within that same period, the district shall also give notice of the name change by mail to utility customers or permittees, if any, and, to the extent practicable, to the holders of bonds, obligations, and other indebtedness of the district. Failure of the district to comply with this subsection does not affect the validity of the name change.

(d) A change in the name of a district does not affect bonds, obligations, or other indebtedness of the district existing before the name change occurred.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.072. LIMITATION ON FUTURE EMPLOYMENT. (a) A person who has served as a director of a district may not contract with that district or be employed by an organization to which the district has awarded a contract for one year following the date on which the person ceased to serve as a director.

(b) This section does not apply to a person who has served as a director of a district that performs agricultural irrigation functions under Chapter 51, 55, or 58 if the person, when serving as a director, was required to own land as a qualification for office.

Added by Acts 2003, 78th Leg., ch. 469, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER D. ELECTION PROVISIONS

Sec. 49.101. GENERAL. All elections shall be generally conducted in accordance with the Election Code except as otherwise provided for by this code. Write-in candidacies for any district office shall be governed by Subchapter C, Chapter 146, Election Code.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.102. CONFIRMATION AND DIRECTOR ELECTION. (a) Before issuing any bonds or other obligations, an election shall be held within the boundaries of the proposed district on a uniform election date provided by Section 41.001, Election Code, to determine if the proposed district shall be established and, if the directors of the district are required by law to be elected, to elect permanent directors.

(b) Notice of a confirmation or director election shall state the day and place or places for holding the election, the propositions to be voted on, and, if applicable, the number of directors to be voted on.

(c) The ballots for a confirmation election shall be printed to provide for voting "For District" and "Against District." Ballots for a directors election shall provide the names of the persons appointed by the governing body who qualified and are serving as temporary directors at the time the election is called. If the district has received an application by a write-in candidate, the ballots shall also have blank places after the names of the temporary directors in which a voter may write the names of any candidates

appearing on the list of write-in candidates required by Section 146.031, Election Code.

(d) Immediately after the confirmation and director election, the presiding judge shall take returns of the results to the temporary board. The temporary board shall canvass the returns and declare the results at the earliest practicable time.

(e) If a majority of the votes cast in the election favor the creation of the district, then the temporary board shall declare that the district is created and enter the result in its minutes. If a majority of the votes cast in the election are against the creation of the district, the temporary board shall declare that the district was defeated and enter the result in its minutes. A copy of the order shall be filed with the commission not later than the 30th day after the date of the election.

(f) The order canvassing the results of the confirmation election shall contain a description of the district's boundaries and shall be filed with the executive director and in the deed records of the county or counties in which the district is located not later than the 30th day after the date of the election.

(g) The temporary board shall also declare the persons receiving the highest number of votes for directors to have been elected as permanent directors.

(h) Unless otherwise agreed, the elected directors shall decide the initial terms of office by lot, with a simple majority of the elected directors serving until the second succeeding directors election and the remaining elected directors serving until the next directors election.

(i) A district, at an election required under Subsection (a), may submit to the qualified voters of the district the proposition of whether a plan as authorized by Section 49.351 should be implemented or entered into by the district.

(j) The provisions of this section shall not be applicable to any district exercising the powers of Chapter 375, Local Government Code, or any district created by a special Act of the legislature that does not require a confirmation election.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 1423, Sec. 4, eff. June 17, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 6, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 608 (S.B. 911), Sec. 2, eff. September 1, 2019.

Sec. 49.1025. QUALIFIED VOTERS IN CONFIRMATION ELECTION. (a) In this section, "developer of property in the district" has the meaning assigned by Section 49.052(d).

(b) A voter in a confirmation election or an election held jointly with a confirmation election on the same date and in conjunction with the confirmation election to authorize taxes and bonds must be a qualified voter of the district. For the purposes of an election described by this subsection, a person is not a qualified voter if the person:

(1) on the date of the election:

(A) is a developer of property in the district;

(B) is related within the third degree of affinity or consanguinity to a developer of property in the district;

(C) is an employee of a developer of property in the district; or

(D) has resided in the district less than 30 days; or

(2) received monetary consideration from a developer of property in the district in exchange for the person's vote.

(c) In addition to the procedures for accepting a voter under Section 63.001, Election Code, the election officer shall provide to the voter the form of the affidavit required by this section. The election officer must receive a completed affidavit before marking the voter as accepted under Section 63.001(e), Election Code. If the voter does not submit a completed affidavit to the election officer or the information stated on the affidavit demonstrates the voter is not a qualified voter as provided by this section, the voter may be accepted only to vote provisionally under Section 63.011, Election Code.

(d) The district shall submit original or certified copies of voter affidavits to the office of the attorney general in a transcript of the proceedings of the confirmation election.

(e) The office of the attorney general shall prescribe the form of the voter affidavit.

(f) The voter affidavit must require the voter to state under

oath:

(1) the address of the voter and that the voter resides in the territory of the district;

(2) the date the voter changed the voter's residence to the address provided under Subdivision (1); and

(3) that the voter, to the best of the voter's knowledge, believes that the voter's registration is effective on the date of the election.

(g) The affidavit must include the following statement: "I am not a developer of property in the district, related within the third degree of affinity or consanguinity to a developer of property in the district, or an employee of a developer of property in the district. I have not received monetary consideration from a developer of property in the district for my vote in this election."

(h) Compliance with this section or the validity of a voter affidavit may only be challenged in an election contest under Title 14, Election Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 848 (H.B. 2358), Sec. 1, eff. January 1, 2018.

Sec. 49.103. TERMS OF OFFICE OF DIRECTORS. (a) Except as provided by Section 49.102, the members of the board of a district shall serve staggered four-year terms.

(b) Unless a district holds its general election for officers on a date as otherwise provided by statute, after confirmation of a district, an election shall be held on the uniform election date, provided by Section 41.001, Election Code, in May of each even-numbered year to elect the appropriate number of directors.

(c) The permanent directors may assign a position number to each director's office, in which case directors shall thereafter be elected by position and not at large.

(d) A district may provide for the election of all directors, or a majority of directors, from single-member districts, which shall be geographically described within the boundaries of the district in a manner that is equitable for the electors within such districts and within the district generally.

(e) Section 49.002 notwithstanding, in all areas of conflict the provisions of Subsections (a) and (b) shall take precedence over

all prior statutory enactments.

(f) This section does not apply to:

(1) any special law district or authority that is not required by the law creating the district or authority to elect its directors by the public; or

(2) a special utility district operating under Chapter 65.

(g) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 105, Sec. 32, eff. September 1, 2013.

(h) If authorized by the board in the proceedings calling a director election, the secretary of the board or the secretary's designee, on receipt of the certification required by Section 2.052(b), Election Code, shall post notice that the election is not to be held. The notice must be posted, on or before the commencement of early voting, at each polling place that would have been used in the election. If the notice is timely posted:

(1) the board or the board's designee is not required to:

(A) post or publish notice of the election;

(B) prepare or print ballots and election materials; or

(C) hold early and regular voting; and

(2) the board shall meet at the earliest practicable time to declare each unopposed candidate elected to office.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 340, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 248, Sec. 9, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 471 (H.B. 57), Sec. 5, eff. October 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 26.006, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 32, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 127 (H.B. 999), Sec. 1, eff. September 1, 2017.

Sec. 49.104. ALTERNATIVE ELECTION PROCEDURES. (a) Notwithstanding the provisions and requirements of the Election Code and general laws, any two or more districts situated in the same county and in which substantially all of the land is being or has been developed as part of a single community development plan and which are served by common water supply and waste disposal systems may by mutual agreement designate a common election office and common early and regular polling places within one or more of the districts, but outside the boundaries of one or more of the districts, for the conduct of director election proceedings and early and regular balloting in director elections. This alternative election procedure may only be used if the common election office and polling places so designated:

(1) are within buildings open to the public;

(2) are within the boundaries of at least one of the districts;

(3) meet the requirements of the Election Code and general laws as polling places; and

(4) are located not more than five miles from any portion of the boundaries of any of the participating districts.

(b) Such districts may also agree on and designate a common election officer and common early and regular voting officials for some or all of the director elections to be simultaneously conducted at a common location, any of whom may be nonelective employees of one or more of the districts, so long as the early and regular voting officials are qualified voters within at least one of the districts.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.1045. CERTIFICATION OF ELECTION RESULTS IN LESS POPULOUS DISTRICTS. (a) This section applies only to a district that:

(1) has 10 or fewer registered voters; and

(2) holds an election jointly with a county in which the district is wholly or partly located.

(b) A district may provide for an inquiry into and certification of the voting results of an election under this section if:

(1) the election results indicate that the number of votes

cast in the election was greater than the number of registered voters in the district;

(2) the board determines that the election results are likely to be disputed in court; and

(3) the board can determine from the official list of registered voters prepared by the county voter registrar or county elections administrator for the district election which voters were qualified to vote in the district election and can determine from the signature roster from the joint election who voted in the joint election.

(c) To certify the district votes, the board by rule shall adopt a procedure to determine for each person who signed the signature roster as a voter in the joint election:

(1) whether the person's address on the day of the election was in the district; and

(2) how the person voted in the district election.

(d) The certified votes are the official election results.

(e) Certification of the results under this section does not preclude the filing of an election contest.

Added by Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 8, eff. September 1, 2013.

Sec. 49.105. VACANCIES. (a) Except as otherwise provided in this code, a vacancy on the board and in other offices shall be filled for the unexpired term by appointment of the board not later than the 60th day after the date the vacancy occurs.

(b) If the board has not filled a vacancy by appointment before the 61st day after the date the vacancy occurs, a petition, signed by more than 10 percent of the registered voters of the district, requesting the board to fill the vacancy by appointment may be presented to the board.

(c) If the number of directors is reduced to fewer than a majority or if a vacancy continues beyond the 90th day after the date the vacancy occurs, the vacancy or vacancies may be filled by appointment by the commission if the district is required by Section 49.181 to obtain commission approval of its bonds or by the county commissioners court if the district was created by the county commissioners court, regardless of whether a petition has been

presented to the board under Subsection (b). An appointed director shall serve for the unexpired term of the director he or she is replacing.

(d) In the event of a failure to elect one or more members of the board of a district resulting from the absence of, or failure to vote by, the qualified voters in an election held by the district, the current members of the board or temporary board holding the positions not filled at such election shall be deemed to have been elected and shall serve an additional term of office, or, in the case of a temporary board member deemed elected under this subsection, the initial term of office.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 1354, Sec. 10, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 9, eff. September 1, 2013.

Sec. 49.106. BOND ELECTIONS. (a) Before an election is held to authorize the issuance of bonds, other than refunding bonds, there shall be filed in the office of the district and open to inspection by the public an engineer's report covering the land, improvements, facilities, plants, equipment, and appliances to be purchased or constructed and their estimated cost, together with maps, plats, profiles, and data fully showing and explaining the report. The engineer's report is not:

(1) part of the proposition or propositions to be voted on; or

(2) a contract with the voters.

(b) Notice of a bond election shall contain the proposition or propositions to be voted on, which includes the estimate of the probable cost of design, construction, purchase, and acquisition of improvements and additions thereto, and incidental expenses connected with such improvements and the issuance of bonds.

(c) A bond election may be held on the same day as any other district election. The bond election may be called by a separate election order or as a part of any other election order. The board may submit multiple purposes in a single proposition at an election.

(d) A bond election may be called as a result of an agreement to annex additional territory into the district.

(e) A district's authorization to issue bonds resulting from an election held under this section, or any other law that allows for the qualified voters of a district to authorize the issuance of bonds by a district, remains in effect after the election unless the district is dissolved or is annexed by another district.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 5, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1423, Sec. 5, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 248, Sec. 10, eff. June 18, 2003.

Sec. 49.107. OPERATION AND MAINTENANCE TAX. (a) A district may levy and collect a tax for operation and maintenance purposes, including funds for planning, constructing, acquiring, maintaining, repairing, and operating all necessary land, plants, works, facilities, improvements, appliances, and equipment of the district and for paying costs of proper services, engineering and legal fees, and organization and administrative expenses.

(b) An operation and maintenance tax may not be levied by a district until it is approved by a majority of the electors voting at an election held for that purpose. After such a tax has been authorized by the district's voters, the board shall be authorized to levy the tax and have it assessed and collected as other district taxes.

(c) An operation and maintenance tax election may be held at the same time and in conjunction with any other district election. The election may be called by a separate election order or as part of any other election order.

(d) The proposition in an operation and maintenance tax election may be for a specific maximum rate or for an unlimited rate. The ballot for an operation and maintenance tax election shall be printed to provide for voting for or against the proposition: "An Operation and Maintenance Tax" and either "Not to exceed _____ ($_____) Per One Hundred Dollars ($100) Valuation of Taxable Property" or "At an Unlimited Rate," as applicable. The ballot may describe the general purpose and state the constitutional authorization of the operation and maintenance tax.

(e) If a district has any surplus operation and maintenance tax funds that are not needed for the purposes for which they were collected, the funds may be used for any lawful purpose.

(f) Before a district reimburses a developer of property in the district, as that term is defined in Section 49.052(d), or its assigns, from operation and maintenance tax funds, for planning, constructing, or acquiring facilities, the district shall obtain approval by the executive director.

(g) Sections 26.04, 26.05, 26.061, 26.07, and 26.075, Tax Code, do not apply to a tax levied and collected under this section or an ad valorem tax levied and collected for the payment of the interest on and principal of bonds issued by a district.

(h) To the extent authorized by Section 59, Article XVI, Texas Constitution, an operation and maintenance tax to be used for recreational facilities, as defined by Section 49.462, levied by a district located in a county with a population of more than 3.3 million or in a county adjacent to that county may not exceed 10 cents per $100 of assessed valuation of taxable property in the district.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 1423, Sec. 6, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 343, Sec. 2.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 86, eff. January 1, 2020.

Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 2, eff. September 1, 2019.

Sec. 49.108. CONTRACT ELECTIONS. (a) A contract may provide that the district will make payment under the contract from proceeds from the sale of notes or bonds, from taxes, or from any other income of the district or any combination of these.

(b) A district may make payments under a contract from taxes other than operation and maintenance taxes after the provisions of the contract have been approved by a majority of the qualified voters voting at an election held for that purpose. A contract approved by the qualified voters of a district may contain a provision stating that the contract may be modified or amended by the board without

voter approval.

(c) A contract election may be held at the same time and in conjunction with any other district election. The election may be called by a separate election order or as part of any other election order.

(d) A contract approved by the voters will constitute an obligation against the taxing power of the district to the extent provided in the contract.

(e) A district that is required under Section 49.181 to obtain approval by the commission of the district's issuance of bonds must obtain approval by the executive director before the district enters into an obligation under this section to collect tax for debt that exceeds three years. This subsection does not apply to contract taxes that are levied to pay for a district's share of bonds that have been issued by another district and approved by the commission or bonds issued by a municipality.

(f) Sections 26.04, 26.05, 26.061, 26.07, and 26.075, Tax Code, do not apply to a tax levied and collected for payments made under a contract approved in accordance with this section.

(g) On or before the first day for early voting by personal appearance at an election held to authorize a contract, a substantially final form of the contract must be filed in the office of the district and must be open to inspection by the public. The contract is not required to be attached as an exhibit to the order calling the election to authorize the contract.

(h) A single contract may contain multiple purposes or provisions for multiple facilities authorized by one or more constitutional provisions. The contract may generally describe the facilities to be acquired or financed by the district without reference to specific constitutional provisions. A contract described by this subsection may be submitted for approval in a single proposition at an election.

(i) A contract between districts to provide facilities or services is not required to specify the maximum amount of bonds or expenditures authorized under the contract if:

(1) the contract provides that the service area cannot be enlarged without the consent of at least two-thirds of the boards of directors of the districts that are:

(A) included in the service area as proposed to be enlarged; or

(B) served by the facilities or services provided in the contract;

(2) the contract provides that bonds or expenditures, payable wholly or partly from contract taxes, are issued or made:

(A) on an emergency basis; or

(B) to purchase, construct, acquire, own, operate, repair, improve, or extend services or facilities necessary to comply with changes in applicable regulatory requirements; or

(3) the contract provides that the bonds or expenditures require prior approval by any district that is obligated to pay debt service on those bonds or to pay for those expenditures wholly or partly with contract taxes.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 6, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1160, Sec. 1, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1423, Sec. 7, eff. June 17, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 10, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 87, eff. January 1, 2020.

Sec. 49.109. AGENT DURING ELECTION PERIOD. The board may appoint a person, including a district officer, employee, or consultant, to serve as the district's agent under Section 31.123, Election Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 11, eff. September 1, 2013.

Sec. 49.110. ELECTION JUDGE. (a) The notice requirements for the appointment of a presiding election judge under Section 32.009, Election Code, do not apply to an election held by a district.

(b) To serve as an election judge in an election held by a district, a person must be a registered voter of the county in which the district is wholly or partly located. To the extent of any conflict with Section 32.051, Election Code, this section controls.

Added by Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 11, eff. September 1, 2013.

Sec. 49.111. EXEMPTIONS FROM USE OF ACCESSIBLE VOTING SYSTEMS. (a) Notwithstanding Sections 61.012 and 61.013, Election Code, a district is exempt from the acquisition, lease, or use of an electronic voting system for an election if:

(1) the election is a confirmation election or an election held jointly with a confirmation election on the same date and in conjunction with the confirmation election, except for an election in which a federal office appears on the ballot;

(2) the most recently scheduled district directors' election was not held, as provided by Section 2.053(b), Election Code; or

(3) fewer than 250 voters voted at the most recently held district directors' election.

(b) A district eligible for the exemption under Subsection (a) must publish notice in a newspaper of general circulation in an area that includes the district or mail notice to each voter in the district regarding the district's intention to hold an election without providing a voting station that meets the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) on election day and during the period for early voting by personal appearance. The notice must be published or mailed not later than the later of:

(1) the 75th day before the date of the election; or

(2) the date on which the district adopts the order calling the election.

(c) The notice required by Subsection (b) must:

(1) provide that any voter in the district may request the use of a voting station that meets the accessibility requirements for voting by a person with a disability; and

(2) provide information on how to submit such a request.

(d) The district shall comply with a request for an accessible voting station if the request is received not later than the 45th day before the date of the election.

Added by Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 11, eff. September 1, 2013.

Sec. 49.112. CANCELLATION OF ELECTION; REMOVAL OF BALLOT MEASURE. Before the first day of early voting by personal appearance, the board by order or resolution may cancel an election called at the discretion of the district or may remove from the ballot a measure included at the discretion of the district. A copy of the order or resolution must be posted during the period for early voting by personal appearance and on election day at each polling place that is used or that would have been used in the election.

Added by Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 11, eff. September 1, 2013.

Sec. 49.113. NOTICE FOR FILING FOR PLACE ON BALLOT. A notice required by Section 141.040, Election Code, must be posted at the district's administrative office in the district or at the public place established by the district under Section 49.063 of this chapter not later than the 30th day before the deadline for a candidate to file an application for a place on the ballot of a district directors' election.

Added by Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 11, eff. September 1, 2013.

SUBCHAPTER E. FISCAL PROVISIONS

Sec. 49.151. EXPENDITURES. (a) Except as hereinafter provided, a district's money may be disbursed only by check, draft, order, or other instrument that shall be signed by at least a majority of the directors.

(b) The board may by resolution allow the general manager, treasurer, bookkeeper, or other employee of the district to sign disbursements.

(c) The board may allow disbursements of district money to be transferred by federal reserve wire system or by electronic means. The board by resolution may allow the wire or electronic transfers to accounts in the name of the district or accounts not in the name of the district.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1423, Sec. 8, eff. June 17,

2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 12, eff. September 1, 2013.

Sec. 49.152. PURPOSES FOR BORROWING MONEY. The district may issue bonds, notes, or other obligations to borrow money for any corporate purpose or combination of corporate purposes only in compliance with the methods and procedures provided by this chapter or by other applicable law.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 1354, Sec. 11, eff. Sept. 1, 1999.

Sec. 49.153. REVENUE NOTES. (a) The board, without the necessity of an election, may borrow money on negotiable or nonnegotiable notes of the district to be paid solely from the revenues derived from the ownership of all or any designated part of the district's works, plants, improvements, facilities, or equipment after deduction of the reasonable cost of maintaining and operating the facilities.

(b) The notes may be first or subordinate lien notes within the discretion of the board, but no obligation may ever be a charge on the property of the district or on taxes levied or collected by the district but shall be solely a charge on the revenues pledged for the payment of the obligation. No part of the obligation may ever be paid from taxes levied or collected by the district.

(c) Except as provided by Subsection (e), a district may not execute a note for a term longer than three years unless the commission issues an order approving the note.

(d) This section does not apply to special water authorities.

(e) Subsection (c) does not apply to:

(1) a note issued to and approved by:

(A) the Farmers Home Administration;

(B) the United States Department of Agriculture;

(C) the Texas Water Development Board;

(D) the North American Development Bank; or

(E) a federally chartered instrumentality of the United States authorized under 12 U.S.C. Section 2128(f) to provide financing for water and waste disposal facilities, provided that the district that executes the note is located wholly in a county that:

(i) does not contain a municipality that has a population of more than 750,000; and

(ii) is not adjacent to a county described by Subparagraph (i); or

(2) a district described by Section 49.181(h).

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 7, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 248, Sec. 11, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 608, Sec. 7, eff. June 20, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.19, eff. September 1, 2013.

Sec. 49.154. BOND ANTICIPATION NOTES; TAX ANTICIPATION NOTES. (a) The board may declare an emergency in the matter of funds not being available to pay principal of and interest on any bonds of the district payable in whole or in part from taxes or to meet any other needs of the district and may issue tax anticipation notes or bond anticipation notes to borrow the money needed by the district without advertising or giving notice of the sale. A district's bond anticipation notes or tax anticipation notes are negotiable instruments within the meaning and purposes of the Business & Commerce Code notwithstanding any provision to the contrary in that code. Bond anticipation notes and tax anticipation notes shall mature within one year of their date.

(b) Tax anticipation notes may be issued for any purpose for which the district is authorized to levy taxes, and tax anticipation notes shall be secured with the proceeds of taxes to be levied by the district in the succeeding 12-month period. The board may covenant with the purchasers of the notes that the board will levy a sufficient tax to pay the principal of and interest on the notes and pay the costs of collecting the taxes.

(c) Bond anticipation notes may be issued for any purpose for which bonds of the district may be issued or for the purpose of

refunding previously issued bond anticipation notes. A district may covenant with the purchasers of the bond anticipation notes that the district will use the proceeds of sale of any bonds in the process of issuance for the purpose of refunding the bond anticipation notes, in which case the board will be required to use the proceeds received from sale of the bonds in the process of issuance to pay principal, interest, or redemption price on the bond anticipation notes.

(d) Districts required to seek commission approval of bonds must have an application for such approval on file with the commission prior to the issuance of bond anticipation notes.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 13, eff. September 1, 2013.

Sec. 49.155. PAYMENT OF EXPENSES. (a) The district may pay out of bond proceeds or other available funds of the district all expenses of the district authorized by this section, including expenses reasonable and necessary to effect the issuance, sale, and delivery of bonds as determined by the board, including, but not limited to, the following:

(1) interest during construction;

(2) capitalized interest not to exceed three years' interest;

(3) reasonable and necessary reserve funds not to exceed two years' interest on the bonds;

(4) interest on funds advanced to the district;

(5) financial advisor, bond counsel, attorney, and other consultant fees;

(6) paying agent, registrar, and escrow agent fees;

(7) right-of-way acquisition;

(8) underwriter's discounts or premiums;

(9) engineering fees, including surveying expenses and plan review fees;

(10) commission and attorney general fees;

(11) printing costs;

(12) all organizational, administrative, and operating costs during creation and construction periods;

(13) the cost of investigation and making plans, including preliminary plans and associated engineering reports;

(14) land required for stormwater control;

(15) costs associated with requirements for federal stormwater permits; and

(16) costs associated with requirements for endangered species permits.

(b) For purposes of this section, construction periods shall mean any periods during which the district is constructing its facilities or there is construction by third parties of above ground improvements within the district, but in no event longer than five years.

(c) The district may reimburse any person for money advanced for the purposes in Subsection (a) and may be charged interest on such funds.

(d) These payments may be made from money obtained from the issuance of notes or the sale of bonds issued by the district or out of maintenance taxes or other revenues of the district.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1354, Sec. 12, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1423, Sec. 9, eff. June 17, 2001.

Sec. 49.156. DEPOSITORY. (a) The board, by order or resolution, shall designate one or more banks or savings associations within the state to serve as the depository for the funds of the district. The board shall not be required to advertise or solicit bids in selecting its depositories.

(b) To the extent that funds in the depository banks or savings associations are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of funds by Chapter 2257, Government Code (Public Funds Collateral Act).

(c) The board may authorize a designated representative to supervise the substitution of securities pledged to secure the district's funds.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.157. INVESTMENTS. (a) All district deposits and investments shall be governed by Subchapter A, Chapter 2256, Government Code (Public Funds Investment Act).

(b) The board may provide that an authorized representative of the district may invest and reinvest the funds of the district and provide for money to be withdrawn from the appropriate accounts of the district for the investments on such terms as the board considers advisable.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.1571. INVESTMENT OFFICER. (a) Notwithstanding Section 2256.005(f), Government Code, the board may contract with a person to act as investment officer of the district.

(b) The investment officer of a district shall:

(1) not later than the first anniversary of the date the officer takes office or assumes the officer's duties, attend a training session of at least six hours of instruction relating to investment responsibilities under Chapter 2256, Government Code; and

(2) attend at least four hours of additional investment training within each two-year period after the first year.

(c) Training under this section must be from an independent source approved by:

(1) the board; or

(2) a designated investment committee advising the investment officer.

(d) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with Chapter 2256, Government Code.

(e) During January of each year, each individual, association, business, organization, governmental entity, or other person that provides training under this section shall report to the comptroller a list of the districts for which the person provided required training under this section during the previous calendar year. An individual's reporting requirements under this subsection are satisfied by a report of the individual's employer or the sponsoring or organizing entity of a training program or seminar.

Added by Acts 2001, 77th Leg., ch. 69, Sec. 3, eff. May 14, 2001.

Sec. 49.158. FISCAL YEAR. Within 30 days after a district becomes financially active, the board shall adopt a fiscal year by a formal board resolution. The district shall notify the executive director of the adopted fiscal year within 30 days after adoption. The district may change its fiscal year at any time; provided, however, it may not be changed more than once in any 24-month period. After any change in the district's fiscal year, the district shall notify the executive director of the changed fiscal year within 30 days after adoption.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER F. ISSUANCE OF BONDS

Sec. 49.181. AUTHORITY OF COMMISSION OVER ISSUANCE OF DISTRICT BONDS. (a) A district may not issue bonds to finance a project for which the commission has adopted rules requiring review and approval unless the commission determines that the project is feasible and issues an order approving the issuance of the bonds. This section does not apply to:

(1) refunding bonds if the commission issued an order approving the issuance of the bonds or notes that originally financed the project;

(2) refunding bonds that are issued by a district under an agreement between the district and a municipality allowing the issuance of the district's bonds to refund bonds issued by the municipality to pay the cost of financing facilities;

(3) bonds issued to and approved by:

(A) the Farmers Home Administration;

(B) the United States Department of Agriculture;

(C) the North American Development Bank;

(D) the Texas Water Development Board; or

(E) a federally chartered instrumentality of the United States authorized under 12 U.S.C. Section 2128(f) to finance such a project, provided that the district that issues the bonds is located wholly in a county that:

(i) does not contain a municipality that has a population of more than 750,000; and

(ii) is not adjacent to a county described by Subparagraph (i);

(4) refunding bonds issued to refund bonds described by Subdivision (3); or

(5) bonds issued by a public utility agency created under Chapter 572, Local Government Code, any of the public entities participating in which are districts if at least one of those districts is a district described by Subsection (h)(1)(E).

(b) A district may submit to the commission a written application for investigation of feasibility. An engineer's report describing the project, including the data, profiles, maps, plans, and specifications prepared in connection with the report, must be submitted with the application.

(c) The executive director shall examine the application and the report and shall inspect the project area. The district shall, on request, supply the executive director with additional data and information necessary for an investigation of the application, the engineer's report, and the project.

(d) The executive director shall prepare a written report on the project and include suggestions, if any, for changes or improvements in the project. The executive director shall retain a copy of the report and send a copy of the report to both the commission and the district.

(e) The commission shall consider the application, the engineer's report, the executive director's report, and any other evidence allowed by commission rule to be considered in determining the feasibility of the project.

(f) The commission shall determine whether the project to be financed by the bonds is feasible and issue an order either approving or disapproving, as appropriate, the issuance of the bonds. If the commission determines that an application for the approval of bonds complies with the requirements for financial feasibility and the district submitting the application is not required to comply with rules regarding project completion, the commission may not disapprove the issuance of bonds for all or a portion of a project or require that the funding for all or a portion of a project be escrowed solely on the basis that the construction of the project is not complete at the time of the commission's determination. The commission shall retain a copy of the order and send a copy of the order to the district.

(g) Notwithstanding any provision of this code to the contrary, the commission may approve the issuance of bonds of a district without the submission of plans and specifications of the improvements to be financed with the bonds. The commission may condition the approval on any terms or conditions considered appropriate by the commission.

(h) This section does not apply to:

(1) a district if:

(A) the district's boundaries include one entire county;

(B) the district was created by a special Act of the legislature and:

(i) the district is located entirely within one county;

(ii) the district is located entirely within one or more home-rule municipalities;

(iii) the total taxable value of the real property and improvements to the real property zoned by one or more home-rule municipalities for residential purposes and located within the district does not exceed 25 percent of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(iv) the district was not required by law to obtain commission approval of its bonds before the effective date of this section;

(C) the district is a special water authority;

(D) the district is governed by a board of directors appointed in whole or in part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide, or propose to provide, water, sewer, drainage, reclamation, or flood control services to residential retail or commercial customers as its principal function;

(E) the district on September 1, 2003:

(i) is a municipal utility district that includes territory in only two counties;

(ii) has outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities; and

(iii) has at least 5,000 active water connections;

or

(F) the district:

(i) is a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution, that includes territory in at least three counties; and

(ii) has the rights, powers, privileges, and functions applicable to a river authority under Chapter 30; or

(2) a public utility agency created under Chapter 572, Local Government Code, any of the public entities participating in which are districts if at least one of those districts is a district described by Subdivision (1)(E).

(i) An application for the approval of bonds under this section may include financing for payment of creation and organization expenses. Expenses are creation and organization expenses if the expenses were incurred through the date of the canvassing of the confirmation election. A commission rule regarding continuous construction periods or the length of time for the payment of expenses during construction periods does not apply to expenses described by this section.

(j) The commission shall approve an application to issue bonds to finance the costs of spreading and compacting fill to remove property from the 100-year floodplain made by a levee improvement district if the application otherwise meets all applicable requirements for bond applications.

(k) The commission shall approve an application to issue bonds to finance the costs of spreading and compacting fill to provide drainage that is made by a municipal utility district or a district with the powers of a municipal utility district if the costs are less than the cost of constructing or improving drainage facilities.

(l) If a district is approved for the issuance of bonds by the commission to use a certain return flow of wastewater, the approval applies to subsequent bond authorizations unless the district seeks approval to use a different return flow of wastewater.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 8, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 248, Sec. 12, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 608, Sec. 8, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 904, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 249 (H.B. 828), Sec. 1, eff. May 30, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 36 (S.B. 914), Sec. 1, eff. May 9, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 156 (H.B. 1901), Sec. 1, eff. May 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 14, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 21.004, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 207 (H.B. 4), Sec. 2.20, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 965 (S.B. 2014), Sec. 1, eff. September 1, 2017.

Sec. 49.182. COMMISSION SUPERVISION OF PROJECTS AND IMPROVEMENTS. (a) During construction of projects and improvements approved by the commission under this subchapter, no substantial alterations may be made in the plans and specifications without the approval of the commission in accordance with commission rules.

(b) The executive director may inspect the improvements at any time during construction to determine if the project is being constructed in accordance with the plans and specifications approved by the commission.

(c) If the executive director finds that the project is not being constructed in accordance with the approved plans and specifications, the executive director shall give written notice immediately by certified mail to the district's manager and to each board member.

(d) If within 10 days after the notice is mailed the board does not take steps to ensure that the project is being constructed in accordance with the approved plans and specifications, the executive director shall give written notice of this fact to the attorney general.

(e) After receiving this notice, the attorney general may bring an action for injunctive relief or quo warranto proceedings against the directors. Venue for either suit is exclusively in a district court in Travis County.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.183. BOND SALES. (a) Except for refunding bonds, or bonds sold to a state or federal agency or to the North American Development Bank, bonds issued by a district shall be sold after advertising for and receiving competitive sealed bids and shall be awarded to the bidder whose bid produces the lowest net effective interest rate to the district.

(b) Except for refunding bonds, or bonds sold to a state or federal agency or to the North American Development Bank, before any bonds are sold by a district, the board shall publish an appropriate notice of the sale:

(1) at least one time not less than 10 days before the date of sale in a newspaper of general circulation in the county or counties in which the district is located; and

(2) at least one time in one or more recognized financial publications of general circulation in the state as approved by the state attorney general.

(c) If the district is issuing bonds and refunding bonds as one issue and if the initial principal amount of refunding bonds is 50 percent or more of the total initial principal amount of bonds being issued, for the purposes of this section, the issue shall be considered to be refunding bonds and competitive bids shall not be required.

(d) A district's bonds are negotiable instruments within the meaning and purposes of the Business & Commerce Code. A district's bonds may be issued and bear interest in accordance with Chapters 1201, 1204, and 1371, Government Code, and Subchapters A-C, Chapter 1207, Government Code. Except for this subsection, this section does not apply to special water authorities or districts described in Section 49.181(h)(1)(D).

(e) Subsections (a) and (b) do not apply to district bonds issued pursuant to Chapter 1371, Government Code.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.421, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1423, Sec. 10, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 248, Sec. 13, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 608, Sec. 9, eff. June 20, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 156 (H.B. 1901), Sec. 3, eff. May 28, 2011.

Sec. 49.184. APPROVAL OF BONDS BY ATTORNEY GENERAL; REGISTRATION OF BONDS. (a) Before bonds issued by a district are delivered to the purchasers, a certified copy of all proceedings relating to organization of the district for first bond issues and issuance of the bonds and other relevant information shall be sent to the attorney general.

(b) The attorney general shall carefully examine the bonds, with regard to the record and the constitution and laws of this state governing the issuance of bonds, and the attorney general shall officially approve and certify the bonds if he or she finds that they conform to the record and the constitution and laws of this state and are valid and binding obligations of the district.

(c) After the attorney general approves and certifies the bonds, the comptroller shall register them in a book kept for that purpose and shall record the certificate of the attorney general.

(d) After the approval and registration of the bonds by the comptroller, they shall be incontestable in any court or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

(e) A contract or lease in which the proceeds of the contract or lease are pledged to the payment of a bond may be submitted to the attorney general along with the bond records, and, if submitted, the approval by the attorney general of the bonds shall constitute an approval of the contract or lease and the contract or lease shall be incontestable. A contract or lease, other than a contract or lease in which the proceeds of the contract or lease are pledged to the payment of a bond, may be submitted to the attorney general along with the bond records, and, if reviewed and approved by the attorney general, the approval of the bonds shall constitute an approval of the contract or lease and the contract or lease shall be incontestable.

(f) In any proceeding concerning the validity of the creation of a district or the annexation of property by a district, a certificate of ownership as certified by the central appraisal district of the county or counties in which the property is located

creates a presumption of ownership, and additional proof of ownership is not required unless there is substantial evidence in the official deed records of the county in which the property is located to rebut the presumption. On request by a district, the central appraisal district of the county or counties in which the district is located shall furnish certificates of ownership and may charge reasonable fees to recover the actual costs incurred in preparing the certificates.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 1423, Sec. 11, eff. June 17, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 352 (H.B. 1946), Sec. 1, eff. September 1, 2017.

Sec. 49.185. EXEMPTIONS. This subchapter shall not apply to districts engaged in the distribution and sale of electric energy to the public.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.186. AUTHORIZED INVESTMENTS; SECURITY FOR FUNDS. (a) All bonds, notes, and other obligations issued by a district shall be legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, and trustees, and for all interest and sinking funds and other public funds of the state, and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic.

(b) A district's bonds, notes, and other obligations are eligible and lawful security for all deposits of public funds of the state, and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, notes, and other obligations when accompanied by any

unmatured interest coupons attached to them.

Added by Acts 1997, 75th Leg., ch. 1070, Sec. 9, eff. Sept. 1, 1997.

SUBCHAPTER G. AUDIT OF DISTRICTS

Sec. 49.191. DUTY TO AUDIT. (a) The board shall have the district's fiscal accounts and records audited annually at the expense of the district.

(b) In all areas of conflict, the provisions of this subchapter shall take precedence over all prior statutory enactments.

(c) The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy.

(d) The audit required by this section shall be completed within 120 days after the close of the district's fiscal year.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.192. FORM OF AUDIT. The executive director shall adopt accounting and auditing manuals and, except as otherwise provided by the manuals, the district audit shall be performed according to the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants. Financial statements shall be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.193. FINANCIAL REPORTS. The district's depository, the district's treasurer, and the district's bookkeeper, if any, who receives or has control over any district funds shall keep a full and itemized account of district funds in its, his, or her possession. Such itemized accounts and records shall be available for audit.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.194. FILING OF AUDITS, AFFIDAVITS, AND FINANCIAL REPORTS. (a) Except as provided by Subsection (h), after the board has approved the audit report, it shall submit a copy of the report to the executive director for filing within 135 days after the close of the district's fiscal year.

(b) Except as provided by Subsection (h), if the board refuses to approve the annual audit report, the board shall submit a copy of the report to the executive director for filing within 135 days after the close of the district's fiscal year, accompanied by a statement from the board explaining the reasons for its failure to approve the report.

(c) Copies of the audit report, the annual financial dormancy affidavit, or annual financial report described in Sections 49.197 and 49.198 shall be filed annually in the office of the district.

(d) Each district shall file with the executive director an annual filing affidavit in a format prescribed by the executive director, executed by a duly authorized representative of the board, stating that all copies of the annual audit report, annual financial dormancy affidavit, or annual financial report have been filed under this section.

(e) The annual filing affidavit shall be submitted with the applicable annual document when it is submitted to the executive director for filing as prescribed by this subchapter.

(f) The executive director shall file with the attorney general the names of any districts that do not comply with the provisions of this subchapter.

(g) A submission to the executive director required by this section may be made electronically.

(h) A special water authority shall submit a copy of the audit report to the executive director for filing not later than the 160th day after the date the special water authority's fiscal year ends.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 248, Sec. 14, eff. June 18, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 15, eff. September 1, 2013.

Sec. 49.195. REVIEW BY EXECUTIVE DIRECTOR. (a) The executive director may review the audit report of each district. After reviewing the audit report, the executive director may request additional information from the district. The district shall provide the additional information not later than the 60th day after the date the request was received, unless the executive director extends the time allowed for the district to provide additional information for good cause.

(b) Subject to Subsection (f), the commission may request that the state auditor assist in the establishment of standards and procedures for review of district audits by the executive director.

(c) If the executive director has any objections or determines any violations of generally accepted auditing standards or accounting principles, statutes, or board rules, or if the executive director has any recommendations, he or she shall notify the board and the district's auditor.

(d) Before the audit report may be accepted by the executive director as being in compliance with the provisions of this subchapter, the board and the auditor shall remedy objections and correct violations of which they have been notified by the executive director.

(e) If the audit report indicates that any penal law has been violated, the executive director shall notify the appropriate county or district attorney and the attorney general.

(f) Participation by the state auditor under Subsection (b) is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c), Government Code.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 785, Sec. 54, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 608 (S.B. 911), Sec. 3, eff. September 1, 2019.

Sec. 49.196. ACCESS TO AND MAINTENANCE OF DISTRICT RECORDS. (a) The executive director may review and investigate a district's financial records and may conduct an on-site audit of a district's financial information. The executive director shall have access to

all vouchers, receipts, district fiscal and financial records, and other district records the executive director considers necessary.

(b) All district fiscal records shall be prepared on a timely basis and maintained in an orderly manner in accordance with generally accepted accounting principles. The fiscal records shall be available for public inspection during regular business hours. A district's fiscal records may be removed from the district's office for the purposes of recording its fiscal affairs and preparing an audit, during which time the fiscal records are under the control of the district's auditor.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 608 (S.B. 911), Sec. 4, eff. September 1, 2019.

Sec. 49.197. FINANCIALLY DORMANT DISTRICTS. (a) A financially dormant district is a district that had:

(1) $500 or less of receipts from operations, tax assessments, loans, contributions, or any other sources during the calendar year;

(2) $500 or less of disbursements of funds during the calendar year;

(3) no bonds or other long-term (more than one year) liabilities outstanding during the calendar year; and

(4) no cash or investments that exceeded $5,000 at any time during the calendar year.

(b) A financially dormant district may elect to submit to the executive director a financial dormancy affidavit instead of complying with the audit requirements of Section 49.191.

(c) The annual financial dormancy affidavit shall be prepared in a format prescribed by the executive director and shall be submitted for filing by a duly authorized representative of the district.

(d) The affidavit must be filed annually on or before January 31 with the executive director until such time as the district becomes financially active and the board adopts a fiscal year; thereafter, the district shall file annual audit reports as prescribed by this subchapter.

(e) A district that becomes financially dormant after having been financially active shall be required to file annual financial dormancy affidavits on or before January 31, until the district is either dissolved or again becomes financially active.

(f) Districts governed by this section are subject to periodic audits by the executive director.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.198. AUDIT REPORT EXEMPTION. (a) A district may elect to file annual financial reports with the executive director in lieu of the district's compliance with Section 49.191 provided:

(1) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(2) the district did not have gross receipts from operations, loans, taxes, or contributions in excess of $250,000 during the fiscal period; and

(3) the district's cash and temporary investments were not in excess of $250,000 during the fiscal period.

(b) The annual financial report must be accompanied by an affidavit attesting to the accuracy and authenticity of the financial report signed by a duly authorized representative of the district.

(c) The annual financial report and affidavit in a format prescribed by the executive director must be on file with the executive director within 45 days after the close of the district's fiscal year.

(d) Districts governed by this section are subject to periodic audits by the executive director.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 10, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 444 (S.B. 1361), Sec. 1, eff. August 29, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.23, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1037 (H.B. 3002), Sec. 1, eff. June 17, 2011.

Sec. 49.199. POLICIES AND AUDITS OF DISTRICTS. (a) Subject to the law governing the district, the board shall adopt the following in writing:

(1) a code of ethics for district directors, officers, employees, and persons who are engaged in handling investments for the district;

(2) a policy relating to travel expenditures;

(3) a policy relating to district investments that ensures that:

(A) purchases and sales of investments are initiated by authorized individuals, conform to investment objectives and regulations, and are properly documented and approved; and

(B) periodic review is made of district investments to evaluate investment performance and security;

(4) policies and procedures for selection, monitoring, or review and evaluation of professional services;

(5) a uniform method of accounting and reporting for industrial development bonds and pollution control bonds that complies with requirements of the commission; and

(6) policies that ensure a better use of management information including:

(A) budgets for use in planning and controlling cost;

(B) an audit committee of the board; and

(C) uniform reporting requirements that use "Audits of State and Local Governmental Units" as a guide on audit working papers and that use "Governmental Accounting and Financial Reporting Standards."

(b) The state auditor may audit the financial transactions of any district if the state auditor determines that the audit is necessary.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.1991. EFFICIENCY REVIEW OF RIVER AUTHORITIES. A district that is a river authority is subject to an efficiency review by the Legislative Budget Board.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1293 (H.B. 2362), Sec. 1, eff. September 1, 2013.

Sec. 49.200. REVIEW AND COMMENT ON BUDGET OF CERTAIN DISTRICTS. A district that provides wholesale potable water and wastewater services shall adopt a program that provides such wholesale customers an opportunity to review and comment on the district's annual budget that applies to their services before that budget is adopted by the board.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER H. POWERS AND DUTIES

Sec. 49.211. POWERS. (a) A district shall have the functions, powers, authority, rights, and duties that will permit accomplishment of the purposes for which it was created or the purposes authorized by the constitution, this code, or any other law.

(b) A district is authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all land, works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of its creation or the purposes authorized by this code or any other law.

(c) A district that is authorized by law to engage in drainage or flood control activities may adopt:

(1) a master drainage plan, including rules relating to the plan and design criteria for drainage channels, facilities, and flood control improvements;

(2) rules for construction activity to be conducted within the district that:

(A) reasonably relate to providing adequate drainage or flood control; and

(B) use generally accepted engineering criteria; and

(3) reasonable procedures to enforce rules adopted by the district under this subsection.

(d) If a district adopts a master drainage plan under Subsection (c)(1), the district may adopt rules relating to review and approval of proposed drainage plans submitted by property developers. The district, by rule, may require that a property developer who proposes to subdivide land located in the district, and who is otherwise required to obtain approval of the plat of the proposed subdivision from a municipality or county, submit for

district approval a drainage report for the subdivision. The drainage report must include a map containing a description of the land to be subdivided. The map must show an accurate representation of:

(1) any existing drainage features, including drainage channels, streams, flood control improvements, and other facilities;

(2) any additional drainage facilities or connections to existing drainage facilities proposed by the property developer's plan for the subdivision; and

(3) any other parts of the property developer's plan for the subdivision that may affect drainage.

(e) The district shall review each drainage report submitted to the district under this section and shall approve a report if it shows compliance with:

(1) the requirements of this section;

(2) the district's master drainage plan adopted under Subsection (c)(1); and

(3) the rules adopted by the district under Subsections (c)(2) and (d).

(f) On or before the 30th day after the date a drainage report is received, the district shall send notice of the district's approval or disapproval of the drainage report to:

(1) the property developer; and

(2) each municipal or county authority with responsibility for approving the plat of the proposed subdivision.

(g) If the district disapproves a drainage report, the district shall include in the notice of disapproval a written statement:

(1) explaining the reasons for the rejection; and

(2) recommending changes, if possible, that would make a revised version of the drainage report acceptable for approval.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 11, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 486, Sec. 1, eff. June 20, 2003.

Sec. 49.212. FEES AND CHARGES. (a) A district may adopt and enforce all necessary charges, mandatory fees, or rentals, in addition to taxes, for providing or making available any district facility or service, including fire-fighting activities provided

under Section 49.351.

(b) A district may require a deposit for any services or facilities furnished and the district may or may not provide that the deposit will bear interest.

(c) Subject to observance of the procedure appropriate to the circumstances, a district may discontinue any or all facilities or services to prevent an abuse or to enforce payment of an unpaid charge, fee, or rental due the district, including taxes that have been delinquent for not less than six months.

(d) Notwithstanding any provision of law to the contrary, a district that charges a fee that is an impact fee as described in Section 395.001(4), Local Government Code, must comply with Chapter 395, Local Government Code. A charge or fee is not an impact fee under that chapter if:

(1) the charge or fee is imposed by a district for construction, installation, or inspection of a tap or connection to district water, sanitary sewer, or drainage facilities, including all necessary service lines and meters, for capacity in storm water detention or retention facilities and related storm water conveyances, or for wholesale facilities that serve such water, sanitary sewer, drainage, or storm water detention or retention facilities; and

(2) the charge or fee:

(A) does not exceed three times the actual costs to the district for such tap or connection;

(B) if made to a nontaxable entity for retail or wholesale service, does not exceed the actual costs to the district for such work and for all facilities that are necessary to provide district services to such entity and that are financed or are to be financed in whole or in part by tax-supported or revenue bonds of the district; or

(C) is made by a district for retail or wholesale service on land that at the time of platting was not being provided with water, wastewater, drainage, or storm water detention or retention service by the district.

(d-1) Actual costs under Subsections (d)(1) and (d)(2), as determined by the board in its reasonable discretion, may include nonconstruction expenses attributable to the design, permitting, financing, and construction of those facilities, and reasonable interest on those costs calculated at a rate not to exceed the net

effective interest rate on any district bonds issued to finance the facilities.

(d-2) A district may pledge the revenues of the district's utility system to pay the principal of or interest on bonds issued to construct the capital improvements for which a charge or fee is imposed under Subsection (d), and money received from the fees shall be considered revenues of the district's utility system for purposes of the district's bond covenants.

(e) Chapter 2007, Government Code, does not apply to a tax levied, a standby fee imposed, or a charge, fee, or rental adopted or enforced by a district under this chapter, another chapter of this code, or Chapter 395, Local Government Code.

(f) Except as provided by Subsections (g) and (h), a district may not impose an impact fee, standby fee, or assessment on the property, including the equipment, rights-of-way, easements, facilities, or improvements, of:

(1) an electric utility or a power generation company as defined by Section 31.002, Utilities Code;

(2) a gas utility as defined by Section 101.003 or 121.001, Utilities Code, or a person who owns pipelines used for the transportation or sale of oil or gas or a product or constituent of oil or gas;

(3) a person who owns pipelines used for the transportation or sale of carbon dioxide;

(4) a telecommunications provider as defined by Section 51.002, Utilities Code; or

(5) a cable service provider or video service provider as defined by Section 66.002, Utilities Code.

(g) A district may impose an impact fee, standby fee, or assessment on property described by Subsection (f) that is used as office space.

(h) A district may impose an impact fee on property described by Subsection (f) on the same terms as the district imposes an impact fee on other property if the owner of the property requests water or sewer services for that property from the district.

(i) Subsection (f) does not affect a district's authority to impose an ad valorem tax on property in the boundaries of the district under this chapter or other law.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 12, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1423, Sec. 12, eff. June 17, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 955 (H.B. 3435), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 16, eff. September 1, 2013.

Sec. 49.2121. ACCEPTANCE OF CREDIT CARDS. (a) In this section, "credit card" means a card, plate, or similar device authorizing a designated person or bearer to obtain goods, services, money, or any other thing of value on credit.

(b) A district may:

(1) accept a credit card for the payment of any fees and charges imposed by the district;

(2) collect a fee that is reasonably related to the expense incurred by the district in processing the payment by credit card; and

(3) collect a service charge for the expense incurred by the district in collecting the original fee or charge if the payment by credit card is not honored by the credit card company on which the funds are drawn.

(c) The service charge under Subsection (b)(3) may not exceed the amount charged for the collection of a check drawn on an account with insufficient funds.

(d) The district may not collect the service charge under Subsection (b)(3) if:

(1) the district is notified at the time of payment that the payment is not honored; and

(2) the customer immediately submits to the district an alternative form of payment.

Added by Acts 2005, 79th Leg., Ch. 260 (H.B. 1935), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 17, eff. September 1, 2013.

Sec. 49.2122. ESTABLISHMENT OF CUSTOMER CLASSES. (a) Notwithstanding any other law, a district may establish different charges, fees, rentals, or deposits among classes of customers that are based on any factor the district considers appropriate, including:

(1) the similarity of the type of customer to other customers in the class, including:

(A) residential;

(B) commercial;

(C) industrial;

(D) apartment;

(E) rental housing;

(F) irrigation;

(G) homeowner associations;

(H) builder;

(I) out-of-district;

(J) nonprofit organization; and

(K) any other type of customer as determined by the district;

(2) the type of services provided to the customer class;

(3) the cost of facilities, operations, and administrative services to provide service to a particular class of customer, including additional costs to the district for security, recreational facilities, or fire protection paid from other revenues; and

(4) the total revenues, including ad valorem tax revenues and connection fees, received by the district from a class of customers relative to the cost of service to the class of customers.

(a-1) Notwithstanding Subsection (a), a district that provides nonsubmetered master metered utility service, as defined by Section 13.087(a)(1), to a recreational vehicle park, as defined by Section 13.087(a)(3):

(1) shall determine the rates for that service on the same basis the district uses to determine the rates for other commercial businesses that serve transient customers and receive nonsubmetered master metered utility service from the district; and

(2) may not charge a person who owns or operates a recreational vehicle park that receives nonsubmetered master metered utility service from the district an administrative fee for the services provided.

(b) A district is presumed to have weighed and considered

appropriate factors and to have properly established charges, fees, rentals, and deposits absent a showing that the district acted arbitrarily and capriciously.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 7.01, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 6 (S.B. 569), Sec. 1, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 613 (S.B. 1268), Sec. 7, eff. September 1, 2013.

Sec. 49.2125. FEES AND OTHER CHARGES OF CERTAIN REGIONAL WATER AUTHORITIES AFTER ANNEXATION. (a) This section applies to a regional water authority that:

(1) was established after January 1, 1999;

(2) is located entirely within a county with a population greater than 3.4 million according to the 2000 federal decennial census; and

(3) has a population greater than 375,000 according to the 2000 federal decennial census.

(b) Notwithstanding any other law, except to the extent an authority to which this section applies agrees in writing, a municipality's annexation of territory within the authority has no effect on the authority's ability to assess and collect inside the territory annexed by the municipality the types of fees, rates, charges, or special assessments that the authority was assessing and collecting at the time the municipality initiated the annexation; provided, however, that the authority's ability to assess and collect such fees, rates, charges, or special assessments shall terminate on the later to occur of (i) the date of final payment or defeasance of any bonds or other indebtedness, including any refunding bonds, that are secured by such fees, rates, charges, or special assessments or (ii) the date that the authority no longer provides services inside the annexed territory. An authority to which this section applies shall continue to provide services to the annexed territory in accordance with contracts in effect at the time of the annexation unless a written agreement between the governing body of the authority and the governing body of the municipality provides

otherwise.

Added by Acts 2003, 78th Leg., ch. 248, Sec. 15, eff. June 18, 2003.

Sec. 49.213. AUTHORITY TO ISSUE CONTRACTS. (a) A district may contract with a person or any public or private entity for the joint construction, financing, ownership, and operation of any works, improvements, facilities, plants, equipment, and appliances necessary to accomplish any purpose or function permitted by a district, or a district may purchase an interest in any project used for any purpose or function permitted by a district.

(b) A district may enter into contracts with any person or any public or private entity in the performance of any purpose or function permitted by a district.

(c) A district may enter into contracts, which may be of unlimited duration, with persons or any public or private entities on the terms and conditions the board may consider desirable, fair, and advantageous for:

(1) the purchase or sale of water;

(2) the collection, transportation, treatment, and disposal of its domestic, industrial, and communal wastes or the collection, transportation, treatment, and disposal of domestic, industrial, and communal wastes of other persons;

(3) the gathering, diverting, and control of local storm water, or other local harmful excesses of water;

(4) the continuing and orderly development of the land and property within the district through the purchase, construction, or installation of works, improvements, facilities, plants, equipment, and appliances that the district may otherwise be empowered and authorized to do or perform so that, to the greatest extent reasonably possible, considering sound engineering and economic practices, all of the land and property may be placed in a position to ultimately receive the services of the works, improvements, plants, facilities, equipment, and appliances;

(5) the maintenance and operation of any works, improvements, facilities, plants, equipment, and appliances of the district or of another person or public or private entity;

(6) the collection, treatment, and disposal of municipal solid wastes; and

(7) the exercise of any other rights, powers, and duties granted to a district.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.214. CONFLICTS OF INTEREST IN CONTRACTS. The provisions of Chapter 171, Local Government Code, shall apply to the award of district contracts.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.2145. USE OF MONEY RECEIVED UNDER CERTAIN CONTRACTS. (a) This section applies only to a district located in:

(1) a county included in the Harris-Galveston Subsidence District; or

(2) a county included in the Fort Bend Subsidence District.

(b) A district that receives money from a municipality under the terms of a contract with the municipality, including a strategic partnership agreement authorized by Section 43.0751, Local Government Code, may use the money for any purpose of the district or the municipality, unless the contract requires the district to use the money for a specified purpose. For purposes of this chapter, a district purpose includes a municipal purpose for which money is used under this section.

Added by Acts 2005, 79th Leg., Ch. 581 (H.B. 1599), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 21.005, eff. September 1, 2013.

Sec. 49.215. SERVICE TO AREAS OUTSIDE THE DISTRICT. (a) A district may purchase, construct, acquire, own, operate, repair, improve, or extend all works, improvements, facilities, plants, equipment, and appliances necessary to provide any services or facilities authorized to be provided by the district to areas contiguous to or in the vicinity of the district provided the district does not duplicate a service or facility of another public

entity. A district providing potable water and sewer utility services to household users shall not provide services or facilities to serve areas outside the district that are also within the corporate limits of a city without securing a resolution or ordinance of the city granting consent for the district to serve the area within the city.

(b) To secure money for this purpose, a district is authorized to issue and sell negotiable bonds and notes payable from the levy and collection of ad valorem taxes on all taxable property within the district or from all or any designated part of the revenues received from the operation of the district's works, improvements, facilities, plants, equipment, and appliances or from a combination of taxes and revenues.

(c) Any bonds and notes may be issued upon the terms and conditions set forth in this code.

(d) A district shall not be required to hold a certificate of convenience and necessity as a precondition for providing retail water or sewer service to any customer or service area, notwithstanding the fact that such customer or service area may be located either within or outside the boundaries of the district or has previously received water or sewer service from an entity required by law to hold a certificate of convenience and necessity as a precondition for such service. This subsection does not authorize a district to provide services within an area for which a retail public utility holds a certificate of convenience and necessity or within the boundaries of another district without that district's consent, unless the district has a valid certificate of convenience and necessity to provide services to that area.

(e) A district is authorized to establish, maintain, revise, charge, and collect the rates, fees, rentals, tolls, or other charges for the use, services, and facilities that provide service to areas outside the district that are considered necessary and may be higher than those charged for comparable service to users within the district.

(f) The rates, fees, rentals, tolls, or other charges shall be at least sufficient to meet the expense of operating and maintaining the services and facilities for a water and sanitary sewer system serving areas outside the district and to pay the principal of and interest and redemption price on bonds issued to purchase, construct, acquire, own, operate, repair, improve, or extend the services or

facilities.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.216. ENFORCEMENT BY PEACE OFFICERS. (a) A district may contract for or employ its own peace officers with power to make arrests when necessary to prevent or abate the commission of:

(1) any offense against the rules of the district when the offense or threatened offense occurs on any land, water, or easement owned or controlled by the district;

(2) any offense involving injury or detriment to any property owned or controlled by the district; and

(3) any offense against the laws of the state.

(b) A district may appoint reserve peace officers who may be called to serve as peace officers by the district during the actual discharge of their official duties.

(c) A reserve peace officer serves at the discretion of the district and may be called into service if the district considers it necessary to have additional officers to preserve the peace in or enforce the law of the district.

(d) A reserve peace officer on active duty and actively engaged in assigned duties has the same rights, privileges, and duties as any other peace officer of the district.

(e) Any peace officer who is directly employed by a district, before beginning to perform any duties and at the time of appointment, must take an oath and execute a bond conditioned on faithful performance of such officer's duties in the amount of $1,000 payable to the district. The oath and the bond shall be filed in the district office.

(f) A peace officer contracted for by the district, individually or through a county, sheriff, constable, or municipality, is an independent contractor, and the district is responsible for the acts or omissions of the peace officer only to the extent provided by law for other independent contractors.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 18, eff. September 1, 2013.

Sec. 49.217. OPERATION OF CERTAIN MOTOR VEHICLES ON OR NEAR PUBLIC FACILITIES. (a) In this section, "motor vehicle" means a self-propelled device in, upon, or by which a person or property is or may be transported or drawn on a road or highway.

(b) Except as provided in Subsections (c) and (d), a person may not operate a motor vehicle on a levee, in a drainage ditch, or on land adjacent to a levee, canal, ditch, exposed conduit, pipeline, pumping plant, storm water facility, or other facility for the transmission, storage, treatment, or distribution of water, sewage, or storm water owned or controlled by a district.

(c) A district may authorize the use of motor vehicles on land that it owns or controls by posting signs on the property.

(d) This section does not prohibit a person from:

(1) driving on a public road or highway; or

(2) operating a motor vehicle used for repair or maintenance of public water, sewer, or storm water facilities.

(e) A person who operates a motor vehicle in violation of Subsection (b) commits an offense. An offense under this section is a Class C misdemeanor, except that if a person has been convicted of an offense under this section, a subsequent offense is a Class B misdemeanor.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.218. ACQUISITION OF PROPERTY. (a) A district or water supply corporation may acquire an interest in land, materials, waste grounds, easements, rights-of-way, equipment, contract or permit rights or interests, including a certificate of convenience and necessity, contractual rights to use capacity in facilities and to acquire facilities and other property, real or personal, considered necessary for the purpose of accomplishing any one or more of the district's or water supply corporation's purposes provided in this code or in any other law. A district may utilize proceeds from the sale and issuance of its bonds, notes, or other obligations to acquire the items authorized by this section.

(b) A district or water supply corporation shall have the right to acquire property by gift, grant, or purchase, and the right to acquire property shall include property considered necessary for the construction, improvement, extension, enlargement, operation, or

maintenance of the plants, works, improvements, facilities, equipment, or appliances of a district or a water supply corporation.

(c) A district or water supply corporation may acquire either the fee simple title to or an easement on all land, both public and private, either inside or outside its boundaries and may acquire the title to or an easement on property other than land held in fee.

(d) A district or water supply corporation may require, as a condition for service, that an applicant for service grant to the district or water supply corporation a permanent recorded easement that:

(1) is dedicated to the district or water supply corporation; and

(2) will provide a reasonable right of access and use to allow the district or water supply corporation to construct, install, maintain, replace, upgrade, inspect, or test any facility necessary to serve that applicant as well as the district's or water supply corporation's purposes in providing system-wide service.

(e) A district or water supply corporation may not, under Subsection (d), require an applicant to provide an easement for a service line for the sole benefit of another applicant.

(f) As a condition of service to a new subdivision, a district or water supply corporation may require a developer to provide permanent recorded easements to and throughout the subdivision sufficient to construct, install, maintain, replace, upgrade, inspect, or test any facility necessary to serve the subdivision's anticipated service demands when the subdivision is fully occupied.

(g) A district or water supply corporation may also lease property from others for its use on such terms and conditions as the board of the district or the board of directors of the water supply corporation may determine to be advantageous.

(h) Property acquired under this section, or any other law allowing the acquisition of property by a district or water supply corporation, and owned by a district or water supply corporation is not subject to assessments, charges, fees, or dues imposed by a nonprofit corporation under Chapter 204, Property Code.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 13, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 71, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1423, Sec. 13, eff. June 17, 2001; Acts

2003, 78th Leg., ch. 1276, Sec. 18.009, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 962 (H.B. 1644), Sec. 7, eff. June 18, 2005.

Sec. 49.219. ACQUISITION OF EXISTING FACILITIES. Any district may acquire by agreement all or any part of existing water, sanitary sewer, or drainage systems of any water supply corporation, including works, improvements, facilities, plants, equipment, appliances, contract rights, and other assets and rights that are completed, partially completed, or under construction, and in connection therewith a district may assume all or any part of the contracts, indebtedness, or obligations of the corporation related to said systems, including any contracts, indebtedness, or obligations related to or payable from the revenues of said systems, and may perform all or any part of the obligations of said corporation in the same manner and to the same extent that any other purchaser or assignee could be bound on any such contracts, indebtedness, or obligations. Before assuming any indebtedness or obligations of such corporation related to any such system, a district other than a special water authority shall obtain the approval of the commission of such assumption.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.220. RIGHT TO USE EXISTING RIGHTS-OF-WAY. All districts or water supply corporations are given rights-of-way within, along, under, and across all public, state, county, city, town, or village roads, highways, and rights-of-way and other public rights-of-way without the requirement for surety bond or security; provided, however, that the entity having jurisdiction over such roads, highways, and rights-of-way may require indemnification. A district or water supply corporation shall not proceed with any action to change, alter, or damage a portion of the state highway system without having first obtained the written consent of the Texas Department of Transportation, and the placement of any facility of a district or water supply corporation within state highway right-of-way shall be subject to department regulation.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.221. RIGHT TO ENTER LAND. (a) The directors, engineers, attorneys, agents, operators, and employees of a district or water supply corporation may go on any land to inspect, make surveys, or perform tests to determine the condition, value, and usability of the property, with reference to the proposed location of works, improvements, plants, facilities, equipment, or appliances. The cost of restoration shall be borne by the district or the water supply corporation.

(b) District employees and agents are entitled to enter any public or private property within the boundaries of the district or adjacent to any reservoir or other property owned by the district at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the district. District employees or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.222. EMINENT DOMAIN. (a) A district or water supply corporation may acquire by condemnation any land, easements, or other property inside or outside the district boundaries, or the boundaries of the certificated service area for a water supply corporation, necessary for water, sanitary sewer, storm drainage, or flood drainage or control purposes or for any other of its projects or purposes, and may elect to condemn either the fee simple title or a lesser property interest.

(b) The right of eminent domain shall be exercised in the manner provided in Chapter 21, Property Code, except that a district or a water supply corporation shall not be required to give bond for appeal or bond for costs in any condemnation suit or other suit to which it is a party and shall not be required to deposit more than the amount of any award in any suit.

(c) The power of eminent domain may not be used for the condemnation of land for the purpose of acquiring rights to underground water or of water or water rights.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.223. COSTS OF RELOCATION OF PROPERTY. (a) In the event that the district or the water supply corporation, in the exercise of the power of eminent domain or power of relocation or any other power, makes necessary the relocation, raising, lowering, rerouting, or change in grade of or alteration in construction of any road, bridge, highway, railroad, electric transmission line, telegraph, or telephone properties, facilities, or pipelines, all necessary relocations, raising, lowering, rerouting, or change in grade or alteration of construction shall be done at the sole expense of the district or the water supply corporation unless otherwise agreed to in writing. Such relocation shall be accomplished in a timely manner so that the project of the district or the water supply corporation is not delayed.

(b) "Sole expense" means the actual cost of the relocation, raising, lowering, rerouting, or change in grade or alteration of construction and providing comparable replacement without enhancing the facilities after deducting from it the net salvage value derived from the old facility.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.224. POWER TO CONDEMN CEMETERIES. (a) The use of land for the construction of district dams and creation of lakes and reservoirs for the purpose of conservation and development of the natural resources of this state is hereby declared to be superior to all other uses, and for these purposes only a district has the power of eminent domain to acquire land, improvements, and other property owned and held for cemeteries or burial places necessary for the construction of a dam or that lies inside the area to be covered by the lake or reservoir or within 300 feet of the high water line of the lake or reservoir.

(b) Except as otherwise provided by this subchapter, the procedure in condemnation proceedings is governed by Chapter 21,

Property Code.

(c) Notice shall be served on the title owner of the land on which the cemetery is situated as provided in Chapter 21, Property Code. General notice to persons having relatives interred in the cemetery shall be given by publication for two consecutive weeks in a newspaper circulated in the county in which the cemetery is situated.

(d) The measure of damages in these eminent domain proceedings shall be assessed as in other condemnation cases. An additional amount of damages shall be assessed to cover the cost of removing and reinterring the bodies interred in the cemetery or burial place and the cost of removing and resetting the monuments or markers erected at the graves.

(e) The additional assessment shall be deposited in the registry of the county court and disbursed only for the purpose of removing and reinterring the bodies in other cemeteries in Texas agreed on between the district and the relatives of the deceased persons.

(f) If in any case the district and the relatives of a deceased person cannot agree within 30 days on a cemetery for reinterment, or no relatives appear within that time, then the county judge shall designate the cemetery for reinterment.

(g) Instead of depositing the additional assessment in the registry of the court, the district may execute a bond sufficient to cover costs of removing and reinterring the bodies. The bond shall be payable to and approved by the county judge and conditioned that the bodies will be removed and reinterred as provided by this section.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.225. LEASES. A district may lease any of its property, real or personal, to any person. The lease may contain the terms and provisions that the board determines to be advantageous to the district.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.226. SALE OR EXCHANGE OF REAL OR PERSONAL PROPERTY. (a) Any personal property valued at more than $300 or any land or

interest in land owned by the district which is found by the board to be surplus and is not needed by the district may be sold under order of the board either by public or private sale, or the land, interest in land, or personal property may be exchanged for other land, interest in land, or personal property needed by the district. Except as provided in Subsection (b), land, interest in land, or personal property must be exchanged for like fair market value, which value may be determined by the district. In connection with the sale of surplus land, the board, at its discretion, may impose restrictions on the development and use of the land.

(b) Any property dedicated to or acquired by the district without expending district funds may be abandoned or released to the original grantor, the grantor's heirs, assigns, executors, or successors upon terms and conditions deemed necessary or advantageous to the district and without receiving compensation for such abandonment or release. District property may also be abandoned, released, exchanged, or transferred to another district, municipality, county, countywide agency, or authority upon terms and conditions deemed necessary or advantageous to the district. Narrow strips of property resulting from boundary or surveying conflicts or similar causes, or from insubstantial encroachments by abutting property owners, or property of larger configuration that has been subject to encroachments by abutting property owners for more than 25 years may be abandoned, released, exchanged, or transferred to such abutting owners upon terms and conditions deemed necessary or advantageous to the district. Chapter 272, Local Government Code, does not apply to this section.

(c) Before a public sale of real property, the district shall give notice of the intent to sell by publishing notice once a week for two consecutive weeks in one or more newspapers with general circulation in the district.

(d) If the district has outstanding bonds secured by a pledge of tax revenues, the proceeds of the sale of property originally acquired with bond proceeds shall be:

(1) applied to retire outstanding bonds of the district; or

(2) held and treated as surplus bond proceeds and spent only as provided by the rules of the commission relating to surplus bond proceeds.

(e) If the district does not have any outstanding bonds, the

proceeds derived from the sale of real or personal property may be used for any lawful purpose.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 14, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1423, Sec. 14, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 248, Sec. 16, eff. June 18, 2003.

Sec. 49.2261. PURCHASE, SALE, OR OTHER EXCHANGE OF WATER OR WATER RIGHTS. Notwithstanding any other law, the district may:

(1) purchase, acquire, sell, transfer, lease, or otherwise exchange water or water rights under an agreement between the district and a person or entity that contains terms that are considered advantageous to the district; and

(2) employ agents, consultants, brokers, professionals, or other persons that the board determines are necessary or appropriate to conduct a transaction described by Subdivision (1).

Added by Acts 1997, 75th Leg., ch. 1070, Sec. 15, eff. Sept. 1, 1997.

Sec. 49.227. AUTHORITY TO ACT JOINTLY. A district or water supply corporation may act jointly with any other person or entity, private or public, whether within the State of Texas or the United States, in the performance of any of the powers and duties permitted by this code or any other laws.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.228. DAMAGE TO PROPERTY. A person who wilfully destroys, defaces, damages, or interferes with district or water supply corporation property is guilty of a Class B misdemeanor.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.229. GRANTS AND GIFTS. A district may accept grants, gratuities, advances, and loans in any form from any source approved by the board, including any governmental entity, any private or

public corporation, and any other person and may make and enter into contracts, agreements, and covenants the board considers appropriate in connection with acceptance of grants, gratuities, advances, and loans.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.2291. DONATIONS FOR ECONOMIC DEVELOPMENT. (a) In this section, "economic development program" has the meaning assigned by Section 152.151.

(b) This section applies only to a district located in the unincorporated area of a county with a population of four million or more.

(c) A district may accept a donation in any form from any source approved by the board to provide funds to a nonprofit organization providing economic development programs that the board determines will preserve property values in the district.

(d) A contract with a nonprofit organization providing economic development programs described by Subsection (c) may include the specific uses of donations collected by the district on behalf of the nonprofit organization under this section.

(e) A contract entered into under Subsection (d) must require the nonprofit organization administering the program to:

(1) maintain accounting records and funds independent of all other funds unrelated to the program;

(2) make the records maintained under Subdivision (1) available for public inspection at reasonable times;

(3) have an annual independent audit made of the accounting records and funds;

(4) use the funds only for programs in a county described by Subsection (b); and

(5) reimburse the district for costs of collection incurred by the district, except to the extent that the district agrees to bear those costs.

(f) All records of the administrator of an economic development program, unless protected from disclosure under Chapter 552, Government Code, shall be public information, as defined by Section 552.002, Government Code.

(g) A district providing potable water or sewer service may, as

part of its billing process, collect from customers voluntary donations on behalf of a nonprofit organization providing economic development programs described by Subsection (c). A district that collects voluntary donations under this subsection must give reasonable notice to customers that the donations are voluntary. If a donation is included in the total amount of a district's bill to a customer, the bill must identify the exact amount of the donation and include a telephone number the customer can call to have the donation deleted from the bill and any future bills issued to that customer. Water and sewer service may not be terminated as a result of failing to pay a voluntary donation.

Added by Acts 2015, 84th Leg., R.S., Ch. 780 (H.B. 2528), Sec. 1, eff. June 17, 2015.

Sec. 49.230. AREA-WIDE WASTEWATER TREATMENT. The powers and duties conferred on the district are granted subject to the policy of the state to encourage the development and use of integrated area-wide wastewater collection, treatment, and disposal systems to serve the wastewater disposal needs of the citizens of the state whenever economically feasible and competitive to do so, it being an objective of the policy to avoid the economic burden to the people and the impact on the quality of the water in the state that result from the construction and operation of numerous small wastewater collection, treatment, and disposal facilities to serve an area when an integrated area-wide wastewater collection, treatment, and disposal system for the area can be reasonably provided.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.231. STANDBY FEES. (a) In this section:

(1) "Standby fee" means a charge, other than a tax, imposed on undeveloped property for the availability of potable water, sanitary sewer, or drainage facilities and services.

(2) "Undeveloped property" means a tract, lot, or reserve in the district to which no potable water, sanitary sewer, or drainage connections have been made for which:

(A) water, sanitary sewer, or drainage facilities and services are available;

(B) water supply, wastewater treatment plant capacity, or drainage capacity sufficient to serve the property is available; or

(C) major water supply lines, wastewater collection lines, or drainage facilities with capacity sufficient to serve the property are available.

(b) A district that proposes to provide or actually provides retail potable water or sewer utility services, or drainage services as the principal function of the district, may, with the approval of the commission, adopt and impose on the owners of undeveloped property in the district a standby fee in addition to taxes levied by the district. A district may not impose a standby fee for debt service purposes on undeveloped property unless the facilities and services available to the property have been financed by the district; however, a district may impose a standby fee for operating and maintaining facilities that it has not financed. The district may impose standby fees in different amounts to fairly reflect the level and type of services and facilities available to serve different property. The intent of the standby fee is to distribute a fair portion of the cost burden for operating and maintaining the facilities and for financing capital costs of the facilities to owners of property who have not constructed improvements but have potable water, sewer, or drainage capacity available. Any revenues collected from the standby fees shall be used to pay operation and maintenance expenses, to pay debt service on the bonds, or both.

(c) If a district described in Subsection (b) desires to adopt and impose a standby fee, the district shall submit to the commission an application for authority to adopt and impose the standby fee. The application must describe the tracts of undeveloped property in the district and state the amount of the proposed fee.

(d) The executive director shall examine an application submitted under Subsection (c) and shall investigate the financial condition of the district, including the district's assets, liabilities, sources of revenue, level of utility service rates, and level of debt service and maintenance tax rates. On the request of the executive director, the district shall submit any information the executive director considers relevant to the examination and investigation. The executive director shall prepare a written report on the application and the district's financial condition, retain a copy of the report, and send a copy of the report to the commission

and the district.

(e) Notice of an application submitted under Subsection (c) shall be published by the district in a form provided by the commission. The district shall publish notice in a newspaper of general circulation in the county or counties in which the district is located once a week for two consecutive weeks. The district shall also send notice of the application by certified mail, return receipt requested, to each owner of undeveloped property in the district. On the date the application is filed, the district's tax assessor and collector shall certify to the district the names of the persons owning undeveloped land in the district as reflected by the most recent certified tax roll of the district. Notice of the application must be sent by certified mail, return receipt requested, to each mortgagee of record that has submitted a written request to be informed of any application for standby fees. The written request for notice must include the name and address of the mortgagee, the name of the property owner in the district, and a brief property description. The commission may act on an application without conducting a hearing if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following publication of the notice or receipt of mail containing the notice under this subsection.

(f) The commission shall consider the application, the report of the executive director, and any other evidence allowed by commission rule. The commission may approve the application only if the commission finds that the fee is necessary to maintain the financial integrity and stability of the district and fairly allocates the costs of district facilities and services among property owners of the district.

(g) The commission shall issue an order approving or disapproving the application. The commission shall retain a copy of the order and send a copy of the order to the district.

(h) The commission may approve the adoption and imposition of the standby fee for a period of not more than three years. The imposition of a standby fee may be renewed for additional periods of not more than three years each in the same manner provided in this section for initial approval of the standby fee.

(i) If approved by the commission, the board by resolution or order may impose an annual standby fee on undeveloped land in the

district.

(j) The board may:

(1) charge interest, at the rate of one percent a month, on a standby fee not paid in a timely manner in accordance with the resolution or order imposing the standby fee;

(2) impose a penalty in connection with a standby fee that is not paid in a timely manner in accordance with the resolution or order imposing the standby fee; and

(3) refuse to provide potable water, sanitary sewer, or drainage service to the property for which the fee was assessed until all delinquent standby fees on the property, interest on those fees, and all penalties imposed in connection with the delinquent standby fees are fully paid.

(k) A standby fee imposed under this section is a personal obligation of the person owning the undeveloped property on January 1 of the year for which the fee is assessed. A person is not relieved of the obligation on transfer of title to the property. On January 1 of each year, a lien attaches to undeveloped property to secure payment of any standby fee, interest on the fee, and any penalty imposed under this section. The lien has the same priority as a lien for taxes of the district.

(l) If a standby fee imposed under this section is not paid in a timely manner, a district may file suit to foreclose the lien securing payment of the fee, interest on the fee, and any penalty imposed in connection with the fee or to enforce the personal obligation for the fee, interest on the fee, and any penalty imposed in connection with the fee. In addition to the fee, interest on the fee, and any penalty imposed, the district may recover reasonable costs, including attorney's fees, incurred by the district in enforcing the lien or obligation not to exceed 20 percent of the delinquent fee, interest on the fee, and any penalty. A suit authorized by this subsection must be filed not later than the fourth anniversary of the date the fee became due. A fee delinquent for more than four years, interest on the fee, and any penalty imposed are considered paid unless a suit is filed before the expiration of the four-year period.

(m) Chapter 395, Local Government Code, does not apply to a standby fee imposed under this section.

(n) For purposes of title insurance policies issued under the authority of Title 11, Insurance Code, standby fees are considered

taxes.

(o) The amount of the penalty authorized by Subsection (j) is six percent of the amount of the standby fee for the first calendar month the standby fee is delinquent, plus an additional one percent of the amount of the fee for each of the subsequent four months, or portion of each of those months, the fee is unpaid, except that if the fee remains unpaid on the first day of the sixth month after the month in which the fee became due, the amount of the penalty is 12 percent of the amount of the standby fee.

(p) This subsection applies only to the board of a district that has entered into a contract with an attorney for the collection of unpaid standby fees. In addition to the penalty authorized by Subsection (j) and in accordance with the resolution or order imposing a standby fee, the board may provide that a standby fee that is not paid in a timely manner is subject to a penalty to defray costs of collection of the unpaid standby fee. The amount of the additional penalty under this subsection may not exceed 15 percent of the amount of the standby fee, interest on the fee, and any penalty imposed in connection with the fee. A penalty under this subsection is incurred on the date set by the board. The penalty may be imposed only if the district or the attorney with whom the district has contracted notifies the property owner of the penalty and the amount of the penalty at least 30 but not more than 60 days before the date the penalty is incurred. A district that imposes the additional penalty under this subsection may not collect both the additional penalty and the attorney's fees provided by Subsection (l).

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1481, Sec. 35, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.164, eff. September 1, 2005.

Sec. 49.232. LABORATORY AND ENVIRONMENTAL SERVICES. A district may contract with any person, within or without the boundaries of the district, to provide or receive laboratory or environmental services related to environmental, health, or drinking water testing.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 17, eff. Sept. 1, 1997.

Sec. 49.233. ELECTRIC GENERATION, TRANSMISSION, AND DISTRIBUTION FOR CERTAIN DISTRICTS. (a) A district that owns or operates raw water pipelines that convey surface water, groundwater, or both surface water and groundwater, through more than 10 counties for municipal and industrial purposes may:

(1) develop, generate, transmit, or distribute water power and electric energy inside the district's boundaries for its own use;

(2) purchase electric energy from any available source for use at a facility the district owns, operates, and maintains inside the district's boundaries;

(3) enter into an agreement to acquire, install, construct, finance, operate, make an addition to, own, or operate an electric energy generating, transmission, or distribution facility jointly with another person; or

(4) sell or otherwise dispose of any of the district's interest in a jointly owned facility described by Subdivision (3).

(b) A district governed by this section:

(1) is subject to the transmission line certification provisions of Chapter 37, Utilities Code;

(2) may not generate electricity by means of hydroelectric generation.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 58, eff. Jan. 1, 2002.

Sec. 49.234. PROHIBITION OF CERTAIN PRIVATE ON-SITE FACILITIES. (a) A district or water supply corporation that operates a wastewater collection system to serve land within its boundaries by rule may prohibit the installation of private on-site wastewater holding or treatment facilities on land within the district that is not served by the district's or corporation's wastewater collection system. A district or corporation that has not received funding under Subchapter K, Chapter 17, may not require a property owner who has installed an on-site wastewater holding or treatment facility before the adoption of the rule to connect to the district's or corporation's wastewater collection system.

(b) A district or water supply corporation that prohibits an installation described by Subsection (a) shall agree to pay the owner of a particular tract the costs of connecting the tract to the district's or corporation's wastewater collection system if the distance along a public right-of-way or utility easement from the nearest point of the district's or corporation's wastewater collection system to the boundary line of the tract requiring wastewater collection services is 300 feet or more, subject to commission rules regarding reimbursement of those costs.

Added by Acts 2001, 77th Leg., ch. 1423, Sec. 15, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 17, eff. June 18, 2003.

Sec. 49.235. DISTRICT ACT OR PROCEEDING PRESUMED VALID. (a) A governmental act or proceeding of a district is conclusively presumed, as of the date it occurred, valid and to have occurred in accordance with all applicable statutes and rules if:

(1) the third anniversary of the effective date of the act or proceeding has expired; and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.

(b) This section does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;

(3) a rule that, at the time it was passed, was preempted by a statute of this state or the United States, including Section 1.06 or 109.57, Alcoholic Beverage Code; or

(4) a matter that on the effective date of this section:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(B) has been held invalid by a final judgment of a court.

Added by Acts 2001, 77th Leg., ch. 389, Sec. 2, eff. May 28, 2001. Renumbered from Water Code Sec. 49.234 by Acts 2003, 78th Leg., ch.

1275, Sec. 2(148), eff. Sept. 1, 2003.

Text of section as added by Acts 2003, 78th Leg., ch. 335, Sec. 1

Sec. 49.236. NOTICE OF TAX HEARING. (a) Before the board adopts an ad valorem tax rate for the district for debt service, operation and maintenance purposes, or contract purposes, the board shall give notice of each meeting of the board at which the adoption of a tax rate will be considered. The notice must:

(1) contain a statement in substantially the following form:

"NOTICE OF PUBLIC HEARING ON TAX RATE

"The (name of the district) will hold a public hearing on a proposed tax rate for the tax year (year of tax levy) on (date and time) at (meeting place). Your individual taxes may increase at a greater or lesser rate, or even decrease, depending on the tax rate that is adopted and on the change in the taxable value of your property in relation to the change in taxable value of all other property. The change in the taxable value of your property in relation to the change in the taxable value of all other property determines the distribution of the tax burden among all property owners.

"(Names of all board members and, if a vote was taken, an indication of how each voted on the proposed tax rate and an indication of any absences.)";

(2) contain the following information:

(A) the district's total adopted tax rate for the preceding year and the proposed tax rate, expressed as an amount per $100;

(B) the difference, expressed as an amount per $100 and as a percent increase or decrease, as applicable, in the proposed tax rate compared to the adopted tax rate for the preceding year;

(C) the average appraised value of a residence homestead in the district in the preceding year and in the current year; the district's total homestead exemption, other than an exemption available only to disabled persons or persons 65 years of age or older, applicable to that appraised value in each of those years; and the average taxable value of a residence homestead in the district in each of those years, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or

older;

(D) the amount of tax that would have been imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older;

(E) the amount of tax that would be imposed by the district in the current year on a residence homestead appraised at the average appraised value of a residence homestead in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older, if the proposed tax rate is adopted;

(F) the difference between the amounts of tax calculated under Paragraphs (D) and (E), expressed in dollars and cents and described as the annual percentage increase or decrease, as applicable, in the tax to be imposed by the district on the average residence homestead in the district in the current year if the proposed tax rate is adopted; and

(G) if the proposed combined debt service, operation and maintenance, and contract tax rate requires or authorizes an election to approve or reduce the tax rate, as applicable, a description of the purpose of the proposed tax increase;

(3) contain a statement in substantially the following form, as applicable:

(A) if the district is a district described by Section 49.23601:

"NOTICE OF VOTE ON TAX RATE

"If the district adopts a combined debt service, operation and maintenance, and contract tax rate that would result in the taxes on the average residence homestead increasing by more than eight percent, an election must be held to determine whether to approve the operation and maintenance tax rate under Section 49.23601, Water Code.";

(B) if the district is a district described by Section 49.23602:

"NOTICE OF VOTE ON TAX RATE

"If the district adopts a combined debt service, operation and maintenance, and contract tax rate that would result in the taxes on the average residence homestead increasing by more than 3.5 percent, an election must be held to determine whether to approve the

operation and maintenance tax rate under Section 49.23602, Water Code."; or

(C) if the district is a district described by Section 49.23603:

"NOTICE OF TAXPAYERS' RIGHT TO ELECTION TO REDUCE TAX RATE

"If the district adopts a combined debt service, operation and maintenance, and contract tax rate that would result in the taxes on the average residence homestead increasing by more than eight percent, the qualified voters of the district by petition may require that an election be held to determine whether to reduce the operation and maintenance tax rate to the voter-approval tax rate under Section 49.23603, Water Code."; and

(4) include the following statement: "The 86th Texas Legislature modified the manner in which the voter-approval tax rate is calculated to limit the rate of growth of property taxes in the state.".

(b) Notice of the hearing shall be:

(1) published at least once in a newspaper having general circulation in the district at least seven days before the date of the hearing; or

(2) mailed to each owner of taxable property in the district, at the address for notice shown on the most recently certified tax roll of the district, at least 10 days before the date of the hearing.

(c) The notice provided under this section may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper of general circulation, and the headline on the notice must be in 18-point or larger type.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 91(6), eff. January 1, 2020.

Added by Acts 2003, 78th Leg., ch. 335, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 88, eff. January 1, 2020.

Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 91(6), eff. January 1, 2020.

Sec. 49.23601. AUTOMATIC ELECTION TO APPROVE TAX RATE FOR LOW

TAX RATE DISTRICTS. (a) In this section, "voter-approval tax rate" means the rate equal to the sum of the following tax rates for the district:

(1) the current year's debt service tax rate;

(2) the current year's contract tax rate; and

(3) the operation and maintenance tax rate that would impose 1.08 times the amount of the operation and maintenance tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older.

(b) This section applies only to a district the board of which has adopted an operation and maintenance tax rate for the current tax year that is 2.5 cents or less per $100 of taxable value.

(c) If the board of a district adopts a combined debt service, contract, and operation and maintenance tax rate that would impose more than 1.08 times the amount of tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older, an election must be held in accordance with the procedures provided by Sections 26.07(c)-(g), Tax Code, to determine whether to approve the adopted tax rate. If the adopted tax rate is not approved at the election, the district's tax rate is the voter-approval tax rate.

Added by Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 89, eff. January 1, 2020.

Sec. 49.23602. AUTOMATIC ELECTION TO APPROVE TAX RATE FOR CERTAIN DEVELOPED DISTRICTS. (a) In this section:

(1) "Developed district" means a district that has financed, completed, and issued bonds to pay for all land, works, improvements, facilities, plants, equipment, and appliances necessary to serve at least 95 percent of the projected build-out of the district in accordance with the purposes for its creation or the purposes authorized by the constitution, this code, or any other law.

(2) "Mandatory tax election rate" means the rate equal to

the sum of the following tax rates for the district:

(A) the rate that would impose 1.035 times the amount of tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older; and

(B) the unused increment rate.

(3) "Unused increment rate" has the meaning assigned by Section 26.013, Tax Code.

(4) "Voter-approval tax rate" means the rate equal to the sum of the following tax rates for the district:

(A) the current year's debt service tax rate;

(B) the current year's contract tax rate;

(C) the operation and maintenance tax rate that would impose 1.035 times the amount of the operation and maintenance tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older; and

(D) the unused increment rate.

(b) This section applies only to a developed district that is not a district described by Section 49.23601.

(c) If the board of a district adopts a combined debt service, contract, and operation and maintenance tax rate that exceeds the district's mandatory tax election rate, an election must be held in accordance with the procedures provided by Sections 26.07(c)-(g), Tax Code, to determine whether to approve the adopted tax rate. If the adopted tax rate is not approved at the election, the district's tax rate is the voter-approval tax rate.

(d) Notwithstanding any other provision of this section, the board of a district may give notice under Section 49.236(a)(3)(A), determine whether an election is required to approve the adopted tax rate of the district in the manner provided for a district under Section 49.23601(c), and calculate the voter-approval tax rate of the district in the manner provided for a district under Section 49.23601(a) if any part of the district is located in an area declared a disaster area during the current tax year by the governor or by the president of the United States. The board may continue

doing so until the earlier of:

(1) the second tax year in which the total taxable value of property taxable by the district as shown on the appraisal roll for the district submitted by the assessor for the district to the board exceeds the total taxable value of property taxable by the district on January 1 of the tax year in which the disaster occurred; or

(2) the third tax year after the tax year in which the disaster occurred.

Added by Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 89, eff. January 1, 2020.

Sec. 49.23603. PETITION ELECTION TO REDUCE TAX RATE FOR CERTAIN DISTRICTS. (a) In this section, "voter-approval tax rate" means the rate equal to the sum of the following tax rates for the district:

(1) the current year's debt service tax rate;

(2) the current year's contract tax rate; and

(3) the operation and maintenance tax rate that would impose 1.08 times the amount of the operation and maintenance tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older.

(b) This section applies only to a district that is not described by Section 49.23601 or 49.23602.

(c) If the board of a district adopts a combined debt service, contract, and operation and maintenance tax rate that would impose more than 1.08 times the amount of tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older, the qualified voters of the district by petition may require that an election be held to determine whether to reduce the tax rate adopted for the current year to the voter-approval tax rate in accordance with the procedures provided by Sections 26.075 and 26.081, Tax Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 89, eff. January 1, 2020.

Sec. 49.237. DISTRICT CONSENT REQUIREMENT. (a) This section applies only to a district that:

(1) provides potable water or sewer service;

(2) contracts for or employs peace officers;

(3) maintains a fire department;

(4) has within its boundaries:

(A) a private airport with a runway exceeding 5,900 feet in length; and

(B) a hotel; and

(5) is located in two counties.

(b) The area within a district described by Subsection (a) may not be included without the consent of the district in the boundaries of a municipality that provides law enforcement or fire protection services.

Added by Acts 2005, 79th Leg., Ch. 1356 (S.B. 1498), Sec. 1, eff. June 18, 2005.

Sec. 49.238. IRRIGATION SYSTEMS. (a) A district may adopt and enforce rules that require an installer of an irrigation system:

(1) to hold a license issued under Section 1903.251, Occupations Code; and

(2) to obtain a permit before installing a system within the boundaries of the district.

(b) If a district adopts rules under Subsection (a), the rules shall include minimum standards and specifications for designing, installing, and operating irrigation systems in accordance with Section 1903.053, Occupations Code, and any rules adopted by the Texas Commission on Environmental Quality under that section.

(c) A district may employ or contract with a licensed plumbing inspector, a licensed irrigation inspector, the district's operator, or another governmental entity to enforce the rules.

(d) A district may charge an installer of an irrigation system a fee for obtaining or renewing a permit under Subsection (a)(2). The district shall set the fee in an amount sufficient to enable the district to recover the cost of administering this section.

(e) This section does not apply to:

(1) an on-site sewage disposal system, as defined by Section 366.002, Health and Safety Code; or

(2) an irrigation system:

(A) used on or by an agricultural operation as defined by Section 251.002, Agriculture Code; or

(B) connected to a groundwater well used by the property owner for domestic use.

Added by Acts 2007, 80th Leg., R.S., Ch. 874 (H.B. 1656), Sec. 2, eff. June 15, 2007.

Sec. 49.239. COOPERATIVE FLOOD CONTROL. A district, including a river authority, may participate in cooperative flood control planning for the purpose of obtaining financial assistance as an eligible political subdivision for a flood control project under Subchapter I, Chapter 15.

Added by Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 2.02, eff. January 1, 2020.

SUBCHAPTER I. CONSTRUCTION, EQUIPMENT, MATERIALS, AND MACHINERY CONTRACTS

Sec. 49.271. CONTRACTS FOR CONSTRUCTION WORK. (a) Any contract made by the board for construction work shall conform to the provisions of this chapter.

(b) The contract shall contain, incorporate by reference, or have attached to it the specifications, plans, and details for work included in the contract. All work shall be done in accordance with these plans and specifications and any authorized change orders under the supervision of the board or its designee.

(c) The district may adopt minimum criteria for the qualifications of bidders on its construction contracts and for sureties issuing payment and performance bonds. For construction contracts over $50,000, the district shall require a person who bids to submit a certified or cashier's check on a responsible bank in the state equal to at least two percent of the total amount of the bid, or a bid bond of at least two percent of the total amount of the bid issued by a surety legally authorized to do business in this state, as a good faith deposit to ensure execution of the contract.

Notwithstanding any criteria adopted under this subsection, for a contract for more than $250,000, the district must accept a bid bond in the amount required by the district as a bid deposit if the bid bond meets the other requirements of this subsection. If the successful bidder fails or refuses to enter into a proper contract with the district, or fails or refuses to furnish the payment and performance bonds required by law, the bidder forfeits the deposit. The payment, performance, and bid bonding requirements of this subsection do not apply to a contract for the purchase of equipment, materials, or machinery not otherwise incorporated into a construction project.

(d) The district may also require attendance by a principal of each prospective bidder at mandatory pre-bid conferences and may make any reasonable additional requirements regarding the taking of bids the district may deem appropriate in order to obtain competitive bids from responsible contractors and to minimize contract disputes.

(e) A district contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1423, Sec. 16, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 248, Sec. 19, eff. June 18, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 33 (S.B. 657), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 452 (H.B. 576), Sec. 1, eff. June 16, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 24.006, eff. September 1, 2009.

Sec. 49.272. REPORTS FURNISHED TO PROSPECTIVE BIDDERS. The board shall furnish to any person who desires to bid on construction work, and who makes a request in writing, a copy of the engineer's report or plans and specifications showing the details of the work to be done. The board may charge for each copy of the engineer's report or plans and specifications an amount sufficient to cover the cost of making the copy.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.273. CONTRACT AWARD. (a) The board shall contract for construction and repair and renovation of district facilities and for the purchase of equipment, materials, machinery, and all things that constitute or will constitute the plant, works, facilities, or improvements of the district in accordance with this section. The bidding documents, plans, specifications, and other data needed to bid on the project must be available at the time of the first advertisement and the advertisement shall state the location at which these documents may be reviewed.

(b) A contract may cover all the work to be provided for the district or the various elements of the work may be segregated for the purpose of receiving bids and awarding contracts. A contract may provide that the work will be completed in stages over a period of years.

(c) A contract may provide for the payment of a total sum that is the completed cost of the work or may be based on bids to cover cost of units of the various elements entering into the work as estimated and approximately specified by the district's engineers, or a contract may be let and awarded in any other form or composite of forms and to any responsible person or persons that, in the board's judgment, will be most advantageous to the district and result in the best and most economical completion of the district's proposed plants, improvements, facilities, works, equipment, and appliances.

(d) For contracts over $75,000, the board shall advertise the letting of the contract, including the general conditions, time, and place of opening of sealed bids. The notice must be published in one or more newspapers circulated in each county in which the district is located. If there are more than four counties in the district, notice may be published in any newspaper with general circulation in the district. The notice must be published once a week for two consecutive weeks before the date that the bids are opened, and the first publication must be not later than the 14th day before the date of the opening of the sealed bids.

(e) For contracts over $25,000 but not more than $75,000, the board shall solicit written competitive bids on uniform written specifications from at least three bidders.

(f) For contracts of not more than $25,000, the board is not required to advertise or seek competitive bids.

(g) The board may not subdivide work to avoid the advertising requirements specified in this section.

(h) The board may not accept bids that include substituted items unless the substituted items were included in the original bid proposal and all bidders had the opportunity to bid on the substituted items or unless notice is given to all bidders at a mandatory pre-bid conference.

(i) If changes in plans, specifications, or scope of work are necessary or beneficial to the district, as determined by the board, after the performance of the contract is begun, or if it is necessary or beneficial to the district, as determined by the board, to decrease or increase the quantity of the work to be performed or of the materials, equipment, or supplies to be furnished, the board may approve change orders making the changes. The board may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of $50,000 or less. The aggregate of the change orders that increase the original contract price by more than 25 percent may be issued only as a result of unanticipated conditions encountered during construction, repair, or renovation or changes in regulatory criteria or to facilitate project coordination with other political entities. A change order is not subject to the requirements of Subsection (d) or (e).

(j) The board is not required to advertise or seek competitive bids for the repair of district facilities if the scope or extent of the repair work cannot be readily ascertained or if the nature of the repair work does not readily lend itself to competitive bidding.

(k) The board may use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing.

(l) The board is not required to advertise or seek competitive bids for security or surveillance systems or components of or additions to district facilities relating to security or surveillance, including systems used for the prevention of terrorist or criminal acts and incidents or acts of war, if the board finds that doing so would compromise the safety and security of district facilities or residents.

(m) In accordance with this section, the board of a district created by special law may elect to contract for the construction and repair and renovation of district facilities and for the purchase of equipment, materials, machinery, and all things that constitute or

will constitute the plant, works, facilities, or improvements of the district, notwithstanding a conflicting provision in the district's special law. For such a district, an election under this subsection must be by resolution of the board and applies only to a contract entered into on or after the effective date of the resolution.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 19, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 436, Sec. 9, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1423, Sec. 17, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 248, Sec. 20, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 33 (S.B. 657), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 479 (H.B. 679), Sec. 6, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 19, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 694 (H.B. 2704), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 8, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 965 (S.B. 2014), Sec. 2, eff. September 1, 2017.

Sec. 49.2731. PROCEDURES FOR ELECTRONIC BIDS. (a) A district may receive bids under Section 49.273 through electronic transmission if the board of the district adopts rules to ensure the identification, security, and confidentiality of electronic bids and to ensure that the electronic bids remain effectively unopened until the proper time.

(b) Notwithstanding any other provision of this chapter, an electronic bid or proposal is required to be sealed. A provision of this chapter that applies to a sealed bid applies to a bid received through electronic transmission in accordance with the rules adopted under Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 694 (H.B. 2704), Sec. 2, eff. June 14, 2013.

Sec. 49.274. EMERGENCY APPROVAL OF DISTRICT PROJECTS. If a district experiences an emergency condition that may create a serious health hazard or unreasonable economic loss to the district that requires immediate corrective action, the district may negotiate limited duration contracts to make the necessary repairs. The district shall submit to the executive director details describing the specific serious health hazard or unreasonable economic loss as soon as practicable following the issuance of the contracts. Whenever possible, the district should obtain prior approval of the executive director before authorizing the contract, but failure to obtain prior approval shall not void the contract. This section does not apply to special water authorities.

added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.275. CONTRACTOR'S BOND. Any person, firm, partnership, or corporation to whom a contract is let must give good and sufficient performance and payment bonds in accordance with Chapter 2253, Government Code, and any minimum criteria for sureties issuing such bonds adopted by a district in accordance with Section 49.271.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.276. PAYMENT FOR CONSTRUCTION WORK. (a) The district shall pay the contract price of construction contracts only as provided in this section.

(b) The district will make progress payments under construction contracts monthly as the work proceeds, or at more frequent intervals as determined by the board or its designee, on estimates approved by the board or its designee.

(c) If requested by the district or district engineer, the contractor shall furnish a breakdown of the total contract price showing the amount included for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates, the district engineer may authorize material delivered on the site and preparatory work done to be considered if the consideration is specifically authorized by the contract and if the contractor furnishes satisfactory evidence that he has acquired title to the material and

that it will be utilized on the work covered by the contract.

(d) In making progress payments, 10 percent of the estimated amount shall be retained until final completion and acceptance of the contract work. However, if the board at any time after 50 percent of the work has been completed finds that satisfactory progress is being made, it may authorize any of the remaining progress payments to be made in full. Also, if the work is substantially complete, the board, if it finds the amount retained to be in excess of the amount adequate for the protection of the district, at its discretion may release to the contractor all or a portion of the excess amount. The district is not obligated to pay interest on amounts retained except as provided herein. The district shall not be obligated to pay any interest on the 10 percent retainage held on the first 50 percent of work completed. If the district holds any retainage on the remaining 50 percent of the work completed, the district shall pay interest on such retainage from the date the retainage is withheld to the date of payment to the contractor. The interest rate to be paid on such retainage shall be the rate of interest paid by the district's depository bank on interest bearing accounts of similar amounts during the period of time interest accrues as provided herein.

(e) On completion and acceptance of each separate project, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention of a percentage.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.277. INSPECTION OF AND REPORTS ON CONSTRUCTION WORK. (a) The board shall have control of construction work being done for the district under contract to determine whether or not the contract is being fulfilled and shall have the construction work inspected by the district engineer or other designated person.

(b) During the progress of the construction work, the district engineer or other designated person shall submit to the board detailed written reports showing whether or not the contractor is complying with the contract, and when the work is completed the district engineer shall submit to the board a final detailed report including as-built plans of the facilities showing whether or not the contractor has fully complied with the contract.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.278. NONAPPLICABILITY. (a) This subchapter does not apply to:

(1) equipment, materials, or machinery purchased by the district at an auction that is open to the public;

(2) contracts for personal or professional services or for a utility service operator;

(3) contracts made by a district engaged in the distribution and sale of electric energy to the public;

(4) contracts for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition;

(5) high technology procurements;

(6) contracts for the purchase of electricity for use by the district; or

(7) contracts for services related to compliance with a state or federal construction storm water requirement, including acquisition of permits, construction, repair, and removal of temporary erosion control devices, cleaning of silt and debris from streets and storm sewers, monitoring of construction sites, and preparation and filing of all required reports.

(b) Sections 252.021(a) and 252.042, Local Government Code, apply to high technology procurements.

Added by Acts 1997, 75th Leg., ch. 1070, Sec. 20, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1423, Sec. 18, eff. June 17, 2001; Acts 2003, 78th Leg. ch. 248, Sec. 21, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1129, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 22.004, eff. September 1, 2005.

Sec. 49.279. PREVAILING WAGE RATES. In addition to the alternative procedures provided by Section 2258.022, Government Code:

(1) a district located wholly or partially within one or more municipalities or within the extraterritorial jurisdiction of one or more municipalities may determine its prevailing wage rate for

public works by adopting the prevailing wage rate of:

(A) one of the municipalities; or

(B) the county in which the district is located or, if the county in which the district is located has not adopted a wage rate, the prevailing wage rate of a county adjacent to the county in which the district is located; and

(2) a district not located wholly or partially within the extraterritorial jurisdiction of a municipality may determine the district's prevailing wage rate by adopting the prevailing wage rate of the county in which the district is located or, if the county in which the district is located has not adopted a wage rate, the wage rate of a county adjacent to the county in which the district is located.

Added by Acts 2001, 77th Leg., ch. 1423, Sec. 19, eff. June 17, 2001.

SUBCHAPTER J. ANNEXATION OR EXCLUSION OF LAND

Sec. 49.301. ADDING LAND BY PETITION OF LANDOWNER. (a) In addition to any other provision provided by law, the owner or owners of land whether or not contiguous to the district or otherwise may file with the board a petition requesting that there be included in the district the land described in the petition by metes and bounds or by lot and block number if there is a recorded plat of the area to be included in the district. The petition may request the district to condition the annexation on certain conditions, including the voter authorization of bonds to serve the area to be annexed.

(b) If the district has bonds, notes, or other obligations outstanding or bonds payable in whole or in part from taxes that have been voted but are unissued, the board shall require the petitioner or petitioners to assume their share of the outstanding bonds, notes, or other obligations and the voted but unissued tax bonds of the district and authorize the board to levy a tax on their property in each year while any of the bonds, notes, or other obligations payable in whole or in part from taxation are outstanding to pay their share of the indebtedness.

(c) The petition of the landowner to add land to the district shall be signed and executed in the manner provided by law for the conveyance of real estate.

(d) The board shall hear and consider the petition and may add

to the district the land described in the petition if it is feasible, practicable, and to the advantage of the district and if the district's system and other improvements of the district are sufficient or will be sufficient to supply the added land without injuring land already in the district.

(e) If the district has bonds payable in whole or in part from taxation that are voted but unissued at the time of an annexation and the petitioners assume the bonds and authorize the district to levy a tax on their property to pay the bonds, then the board may issue the voted but unissued bonds even though the boundaries of the district have been altered since the authorization of the bonds.

(f) Granted petitions shall be filed for record and shall be recorded in the office of the county clerk of the county or counties in which the added land is located.

(g) An order issued by the board under this section is not required to include all of the land described in the petition if the board determines that a change in the description is necessary or desirable.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 21, eff. Sept. 1, 1997.

Sec. 49.302. ADDING LAND BY PETITION OF LESS THAN ALL THE LANDOWNERS. (a) In addition to the method of adding land to a district described in Section 49.301, defined areas of land, whether or not they are contiguous to the district, may be annexed to the district in the manner set forth in this section.

(b) A petition requesting the annexation of a defined area signed by a majority in value of the owners of land in the defined area, as shown by the tax rolls of the central appraisal district of the county or counties in which such area is located, shall describe the land by metes and bounds or by lot and block number if there is a recorded plat of the area and shall be filed with the secretary of the board.

(c) It shall be the duty of the board to pass an order fixing a time and place at which the petition for annexation shall be heard that shall not be less than 30 days from the day of the order calling the hearing.

(d) The secretary of the board shall issue a notice setting forth the time and place of the hearing and describing the area proposed to be annexed. Notice of the hearing shall be given by posting copies of the notice in three public places in the district and in one public place in the area proposed to be annexed for at least 14 days before the day of the hearing and by publishing a copy of the notice in a newspaper of general circulation in the county or counties in which the area proposed to be annexed is located one time at least 14 days before the day of the hearing.

(e) If upon the hearing of the petition it is found by the board that the proposed annexation of the area to the district is feasible, practicable, and to the advantage of the district and if the district's system and other improvements of the district are sufficient or will be sufficient to supply the added land without injuring land already in the district, then the board, by order entered in its minutes, may receive the proposed area as an addition to and to become a part of the district. The order adding the proposed territory to the district need not include all of the land described in the petition if at the hearing a modification or change is found necessary or desirable by the board.

(f) A copy of the order annexing land to the district, attested by the secretary of the board, shall be filed and recorded in the deed records of the county or counties in which the district is located if the land is finally annexed to the district.

(g) After the order is recorded the area shall be a component part of the district.

(h) The annexed area shall bear its pro rata share of all bonds, notes, or other obligations or taxes that may be owed, contracted, or authorized by the district to which it has been added.

(i) Before the added area shall be subject to all or any part of the bonds, notes, obligations, or taxes created before the annexation of the area to the district, the board shall order an election to be held in the district, as enlarged by reason of the annexation of the area, on the question of the assumption of the bonds, notes, obligations, and taxes by the annexed area.

(j) At the same election, the board may also submit a proposition on the question of whether the annexed area should assume its part of the bonds of the district payable in whole or in part from taxes that have been voted previously but not yet issued or sold and the levy of an ad valorem tax on all taxable property within the

area annexed along with a tax on the rest of the district for the payment of the bonds.

(k) If the election results favorably, the district shall be authorized to issue its voted but unissued tax bonds even though the boundaries of the district have been changed since the original election approving the bonds.

(l) At the election called for the purpose of determining whether the annexed area shall assume the bonds, notes, or other obligations or taxes of the district, the board in a separate proposition may also submit the question of whether the board should be authorized to issue bonds payable in whole or in part from taxes to provide service to the area annexed.

(m) In the event that the district has bonds, notes, or obligations or taxes that may be owed, contracted, or authorized at the time an area is annexed or if the district has voted but unissued bonds payable in whole or in part from taxes at the time of an annexation, the board may provide in its order annexing an area to the district that the annexation will not be complete or final unless the indebtedness, tax or bond, note, or other obligation assumption election results favorably to the assumption of the district's outstanding bonds, notes, or other obligations and voted but unissued bonds.

(n) If the board elects to submit the question of whether the board should be authorized to issue bonds to provide service to the area annexed, the board may also provide in its order annexing an area to the district that the annexation will not be complete unless the election results favorably to the issuance of bonds to serve the annexed area.

(o) Whenever an election is ordered to be held in the district for the purpose of the assumption of bonds, notes, or other obligations or taxes or the assumption of voted but unissued bonds by reason of the annexation of any area, then the election shall be held and notice given as provided for bond elections held by the district.

(p) The district has the same right and duty to furnish service to the annexed land that it previously had to furnish service to other land in the district, and the board shall endeavor to serve all land in the district without discrimination.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 22, eff. Sept. 1,

1997; Acts 2001, 77th Leg., ch. 1423, Sec. 20, eff. June 17, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 761 (S.B. 1987), Sec. 4, eff. June 12, 2017.

Acts 2017, 85th Leg., R.S., Ch. 965 (S.B. 2014), Sec. 3, eff. September 1, 2017.

Sec. 49.303. EXCLUDING LAND OR OTHER PROPERTY FROM DISTRICT. (a) A district may exclude land or other property from the district under this subchapter if the district has no outstanding bonds payable in whole or in part from taxes.

(b) If a district has no outstanding bonds payable in whole or in part from taxes, the board may, on its own motion, call a hearing on the question of the exclusion of land or other property from the district under the provisions of this subchapter, if the exclusions are practicable, just, or desirable.

(c) If a district has no outstanding bonds payable in whole or in part from taxes, the board may hold a hearing on the exclusion of land or other property from the district if a landowner or property owner submits a signed petition to the secretary of the board evidencing the consent of the owners of a majority of the acreage proposed to be excluded and a majority of the taxable property in the district, as reflected by the most recent certified tax roll of the district.

(d) A district that has previously held an election at which approval was given for the issuance of bonds payable in whole or in part from taxes may not rely on that election for the issuance of the bonds if after the bond election, but before the bonds are issued, land or other property is excluded from the district as provided by this subchapter. The board must call and hold another bond election and receive voter approval before issuing those bonds.

(e) A district may not exclude land or other property from the district under this section if the district has issued bonds payable in whole or in part from taxes and those bonds are outstanding.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 248, Sec. 22, eff. June 18, 2003.

Sec. 49.304. HEARING TO ANNOUNCE PROPOSED EXCLUSIONS AND TO RECEIVE PETITIONS. (a) If the board determines that an exclusion hearing should be held as provided by Section 49.303, the board shall give notice of the time and place of a hearing to announce its own conclusions relating to land or other property to be excluded and to receive petitions for exclusion of land or other property.

(b) The board shall publish notice of the hearing once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall appear at least 14 days before the day of the hearing.

(c) The notice shall advise all interested property owners of their right to present petitions for exclusions of land or other property and to offer evidence in support of the petitions and their right to contest any proposed exclusion based on either a petition or the board's own conclusions and to offer evidence in support of the contest.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1423, Sec. 21, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 248, Sec. 23, eff. June 18, 2003.

Sec. 49.305. PETITION. (a) A petition for exclusion of land must accurately describe by metes and bounds or lot and block number the land to be excluded. A petition for exclusion of other property must describe the property to be excluded.

(b) A petition for exclusion shall be filed with the district at least seven days before the hearing and shall state clearly the particular grounds on which the exclusion is sought. Only the stated grounds shall be considered.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.306. GROUNDS FOR EXCLUSION. Exclusions from the district may be made on the grounds that:

(1) to retain certain land or other property within the district's taxing power would be arbitrary and unnecessary to conserve the public welfare, would impair or destroy the value of the property desired to be excluded, and would constitute the arbitrary imposition of a confiscatory burden;

(2) to retain any given land or other property in the district and to extend to it, either presently or in the future, the benefits, service, or protection of the district's facilities would create an undue and uneconomical burden on the remainder of the district; or

(3) the land desired to be excluded cannot be bettered as to conditions of living and health, provided with water or sewer service, protected from flood, drained, freed from interruption of traffic caused by excess of water on the roads, highways, or other means of transportation serving the land, or otherwise benefited by the district's proposed improvements.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.307. HEARING AND ORDER EXCLUDING LAND. (a) The board may adjourn the hearing from one day to another and until all persons desiring to be heard are heard. The board immediately shall specifically describe all property it proposes to exclude on its own motion and shall hear first any protests and evidence against exclusions proposed on the board's own motion.

(b) After considering all engineering data and other evidence presented to it, the board shall determine whether the facts disclose the affirmative of the propositions stated in Subdivision (1) or (2) or, if appropriate, in Subdivision (3) of Section 49.306. If the affirmative exists, the board shall enter an order excluding all land or other property falling within the conditions defined by the respective subdivisions and shall redefine in the order the boundaries of the district to embrace all land not excluded. A copy of the order excluding land and redefining the boundaries of the district shall be filed in the deed records of the county or counties in which the district is situated.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.3075. EXCLUSION FOR FAILURE TO PROVIDE SUFFICIENT SERVICES; NO OUTSTANDING BONDS. (a) The board shall call a hearing on the exclusion of land from a district on a written petition filed with the secretary of the board by a landowner whose land has been included in and taxable by the district for more than 20 years if any

bonds issued by the district payable in whole or in part from taxes of the district are no longer outstanding and the petition:

(1) includes a signed petition evidencing the consent of the owners of a majority of the acreage proposed to be excluded, as reflected by the most recent certified tax roll of the district;

(2) includes a claim that the district has not met the landowner's proposals and requests for facilities and services sufficient to service the land at full development; and

(3) describes the property to be excluded.

(b) The board shall hold the hearing at the earliest practicable time after receipt of the petition.

(c) Unless the district presents evidence at the hearing that conclusively demonstrates that the requirements and grounds for exclusion described by Subsection (a) have not been met, the board shall enter an order excluding the land from the district and shall redefine in the order the boundaries of the district to embrace all land not excluded.

(d) A copy of an order excluding land and redefining the boundaries of the district shall be filed in the deed records of each county in which the district is located.

(e) This section does not apply to irrigation districts governed by Chapter 58.

Added by Acts 2003, 78th Leg., ch. 853, Sec. 1, eff. June 20, 2003.

Sec. 49.3076. EXCLUSION FOR FAILURE TO PROVIDE SUFFICIENT SERVICES; BONDS OUTSTANDING. (a) The board of a district that has a total area of more than 10,000 acres shall call a hearing on the exclusion of land from the district on or before the 60th day after receiving a written petition filed with the secretary of the board by one or more owners of land more than half the acreage of which has been for more than 20 years included in and taxable by the district if any bonds issued by the district payable in whole or in part from taxes of the district are outstanding and the petition:

(1) is signed by the owners of a majority of the acreage proposed to be excluded, as reflected by the most recent certified tax roll of the district;

(2) includes a claim that the district does not provide the land with retail utility services;

(3) describes the property to be excluded; and

(4) provides facts necessary for the board to make the findings required by Subsection (b).

(a-1) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1392, Sec. 5, eff. September 1, 2013.

(b) The board of a district shall exclude land under this section if:

(1) the district does not provide retail utility service to the land described by the petition;

(2) the district has imposed a tax on more than half the acreage of the land for at least 20 years; and

(3) all taxes the district has levied and assessed against the land and all fees and assessments the district has imposed against the land or the owner that are due and payable on or before the date of the petition are fully paid.

(c) Subject to Subsection (c-1), unless the district presents evidence at the hearing that conclusively demonstrates that the requirements and grounds for exclusion described by Subsection (a) have not been met, the board shall enter an order excluding the land from the district and shall redefine in the order the boundaries of the district to embrace all land not excluded.

(c-1) If on or before the date of the exclusion hearing required by Subsection (a) the district and the owner or owners enter into an agreement for utility service to the land proposed to be excluded, the district is not required to enter an order excluding the land from the district. An owner of all or part of the land is not required to enter into a utility agreement that as of the date of the petition:

(1) is not comparable economically or in the level of service provided to the land to the owner's current source of utility service, as may be determined by the owner; or

(2) does not include all utility services required to serve the land.

(d) A copy of an order excluding land and redefining the boundaries of the district shall be filed in the deed records of each county in which the district is located and with the commission.

(e) The exclusion of land under this section does not impair the rights of holders of any outstanding bonds, warrants, or other certificates of indebtedness of the district.

(f) After any land is excluded under this section, the district

may issue any unissued additional debt approved by the voters of the district before exclusion of the land under this section without holding a new election. Additional debt issued after land is excluded from the district may not be payable from taxes levied against and does not create a lien against the taxable value of the excluded land.

(g) This section does not apply to irrigation districts governed by Chapter 58.

(g-1) This section does not apply to a district:

(1) whose primary activity is the wholesale supply of raw water and that has fewer than 500 retail customers; or

(2) whose jurisdiction covers four counties and that was created under Section 59, Article XVI, Texas Constitution.

(h) For purposes of this section and Section 49.3077, "land" includes any improvements to the land, and when used in the context of property taxes, "land" has the meaning assigned to "real property" by Section 1.04, Tax Code.

Added by Acts 2003, 78th Leg., ch. 853, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1041 (H.B. 1207), Sec. 1, eff. June 18, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1392 (H.B. 1324), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1392 (H.B. 1324), Sec. 5, eff. September 1, 2013.

Sec. 49.3077. TAX LIABILITY OF EXCLUDED LAND; BONDS OUTSTANDING. (a) In this section:

(1) "Adjusted gross value" means the gross assessed value of property, as of January 1, including land, improvements, and personal property, as determined by the appraisal district for the tax year in which the determination is made, reduced by any state-mandated exemptions but not reduced for any exemptions from taxation that are within the discretion of the governing body of the district.

(2) "Carry costs" means interest calculated at an annual rate equal to the weighted average interest rate of the district debt that accrues on the excluded land's share of the district debt, with reductions for prior payments, from the later of the exclusion date

or the last interest payment date for district debt for which district taxes have been levied and collected to the earlier of:

(A) the date of the final interest payment on district debt before the next delinquency for the district's tax collection; or

(B) the earliest dates on which an aggregate amount of district obligations equal to the district debt may be paid at maturity or redeemed at the option of the district, provided the amount is paid in advance of any future district tax levy, using the redemption dates available for the district's outstanding obligations as of the exclusion date.

(3) "District debt" means the principal outstanding from time to time of the tax-supported debt of the district outstanding on the exclusion date, including debt used to refund district debt outstanding on the exclusion date.

(4) "Excluded land" means land that is excluded from a district under Section 49.3076.

(5) "Excluded land payment" means, with respect to excluded land, the sum of the excluded land's share of district debt plus the carry costs, less any taxes collected by the district under Subsection (b).

(6) "Excluded land's share of district debt" means the portion of the district debt that is calculated by multiplying the district debt by a fraction the numerator of which is the adjusted gross value of the excluded land on the exclusion date and the denominator of which is the adjusted gross value of all property in the district on the exclusion date.

(7) "Exclusion date" means the date that the owner files the petition requesting that the excluded land be excluded from the district with the district secretary.

(8) "Termination date" means the earlier of:

(A) the date on which the amount of taxes collected from the excluded land equals the excluded land payment; or

(B) the date on which the excluded land payment is made in full.

(b) Excluded land that has been pledged as security for any outstanding debt of the district remains pledged for the excluded land's share of district debt until the excluded land payment is paid. A district is entitled to continue to levy and collect debt service taxes on the excluded land until the termination date at the

same rate those taxes are levied on the land remaining in the district. From the exclusion date to the termination date, the excluded land remains in the district for the limited purpose of assessment and collection of such taxes. After the termination date, the excluded land is excluded from the district for all purposes, and the district may not levy any further tax on the excluded land.

(c) The district shall apply the taxes collected on the excluded land only to payment of the excluded land payment, which shall be reduced by the amount of taxes collected.

(d) A person is entitled to pay to the district the excluded land payment, in whole or in part, at any time on or after the exclusion date by delivering payment to the district tax assessor-collector. If partial payment is made, the payment is credited first against all carry costs due and owing, and any remainder is credited against the excluded land's share of district debt. After a partial payment, carry costs must be calculated and assessed and collected only on the remaining excluded land's share of district debt.

Added by Acts 2003, 78th Leg., ch. 853, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1392 (H.B. 1324), Sec. 2, eff. September 1, 2013.

Sec. 49.3078. PETITION FOR EXCLUSION: ADDITIONAL DUTIES. A landowner who signs a petition for the exclusion of land that is filed with a district under Section 49.3076 must submit a copy of the petition to the commission. On receipt of a copy of a petition, the executive director shall review the most recent financial information for the applicable district, including current debt requirements, debt service cash flow, and proposed debt obligations, to confirm that an exclusion of land conducted in accordance with Sections 49.3076 and 49.3077 does not adversely affect the interests of district bondholders. The executive director shall notify the landowner and the district when the review is complete.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1392 (H.B. 1324), Sec. 3, eff. September 1, 2013.

Sec. 49.308. SUIT TO REVIEW EXCLUSION. (a) Any person owning

an interest in land affected by the order may file a petition within 20 days after the effective date of the order to review, set aside, modify, or suspend the order.

(b) The venue in any action shall be in any district court that has jurisdiction in the county in which the district is located. If the district includes land in more than one county, the venue shall be in the district court having jurisdiction in the county in which the major portion of the acreage of the land sought to be excluded from the district is located.

(c) A person may appeal from the judgment or order of a district court in a suit brought under the provisions of this section to the court of civil appeals and supreme court as in other civil cases in which the district court has original jurisdiction. The appeal is subject to the statutes and rules of practice and procedure in civil cases.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.309. EXCLUSION OF NONIRRIGATED PROPERTY. For the purposes of this section and Sections 49.310 through 49.314, the following definitions shall apply:

(1)(A) "Nonirrigated property" means land that:

(i) is not irrigable;

(ii) the owners of a majority of the acreage of which no longer intend to irrigate; or

(iii) has been subdivided into:

(aa) town lots, or town lots and blocks, or small parcels of the same general nature as town lots; or

(bb) town blocks and lots designed, intended, or suitable for residential, commercial, or other nonagricultural purposes, as distinguished from farm acreage whether subdivided into a subdivision or not; and

(cc) including streets, alleys, parkways, parks, and railroad property and rights-of-way located in the subdivided land.

(B) The property described in Paragraph (A) shall be considered nonirrigated property regardless of whether the land is within or near a municipality and regardless of whether a plat or map of the subdivision has been duly filed for record and recorded in the

office of the county clerk of the county in which the land or any part of the land is situated.

(C) The term does not include land that within the year preceding the date of the hearing under Section 49.310 was used for farming or agricultural purposes.

(2) "District" means a water control and improvement, water improvement, or irrigation district the principal purpose of which is furnishing water for the irrigation of agricultural lands or that is principally engaged in furnishing water for the irrigation of agricultural lands.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.310. AUTHORITY TO EXCLUDE LAND. (a) A petition for exclusion may be filed by the owner or owners, or their authorized agent, of a majority in acreage of nonirrigated property included within the boundaries of a district.

(b) Upon receipt of a petition for exclusion, or upon its own motion, a district shall issue an order excluding the property if, after notice and hearing, the board finds that:

(1) the described property is nonirrigated property;

(2) the applicable requirements of Section 49.311 have been satisfied;

(3) the owner or owners do not object to the exclusion of their nonirrigated property; and

(4) it is in the best interest of the district and of the described property to exclude that property from the district.

(c) The district shall follow the notice and hearing provisions and other procedural requirements for excluding territory applicable to that district as set out in Sections 49.303 through 49.307.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.311. CONSENT FROM HOLDERS OF INDEBTEDNESS. If the district has outstanding bonded indebtedness, or indebtedness under a loan from a governmental agency, a written consent from an authorized representative of the holder or holders of the indebtedness consenting to the exclusion shall be obtained and filed with the district before the hearing.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.312. RESULTS OF EXCLUSION. (a) Except as provided by Section 49.3077, on issuance of an order excluding property, that property is no longer a part of the district and is not entitled to water service from the district.

(b) Any taxes, assessments, or other charges owed to the district at the time of exclusion remain the obligation of the owner of the excluded property and continue to be secured by statutory liens on the property, if any.

(c) Except as provided by Section 49.3077, once land is excluded, the landowner has no further liability to the district for future taxes, assessments, or other charges of the district.

(d) A copy of the order excluding the property from the district certified and acknowledged by the secretary of the board shall be recorded by the district in the real property records of the county in which the excluded property is located as evidence of the exclusion.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1392 (H.B. 1324), Sec. 4, eff. September 1, 2013.

Sec. 49.313. DISTRICT FACILITIES ON EXCLUDED PROPERTY. If any canals, ditches, pipelines, pumps, or other facilities of the district are located on lands excluded by the resolution of the board, the exclusion does not affect or interfere with any rights that the district has to maintain and continue operation of the facilities as located for the purpose of servicing lands remaining in the district.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.314. WATER ALLOCATIONS. (a) After the district adopts an order excluding nonirrigated property, a city or other water supply corporation that serves the excluded land with a potable water supply may petition the district to apply to the commission to

convert the proportionate irrigation water allocation of the land excluded as nonirrigated property, as determined by the district, from irrigation use to municipal use allocation.

(b) The district shall make such application to the commission within 30 days of the filing of a petition by the city or water supply corporation that serves the land with a potable water supply, provided the city or other water supply corporation pays the district the amount the district estimates will be its reasonable expenses and attorney's fees incurred in the commission conversion proceedings and enters into an agreement with the district setting forth the basis on which the water allocation shall be delivered, or made available, to the city or water supply corporation covering such terms as the entities may agree to, and in the event the parties cannot agree, such dispute shall not be subject to the jurisdiction of the commission, or its successors, under this code but subject to resolution through alternative dispute resolution. In such commission proceeding, the city or water supply corporation shall provide evidence to the commission of the current or projected need within a five year period for the municipal-use water allocation after such conversion as a condition of such conversion of use of the district's water rights from irrigation use to municipal use.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.315. ADDING AND EXCLUDING LAND BEFORE CONFIRMATION. (a) A district may add or exclude land in accordance with this subchapter:

(1) after a district is created by order of the commission or another governmental entity or by special Act of the legislature; and

(2) before a confirmation election is held as required by Section 49.102.

(b) If land is added or excluded as provided by this section, the election to confirm the district required by Section 49.102 shall be to confirm the district as modified.

Added by Acts 2001, 77th Leg., ch. 1423, Sec. 22, eff. June 17, 2001.

SUBCHAPTER J-1. EXCLUSION OF URBAN PROPERTY FROM CERTAIN WATER DISTRICTS

Sec. 49.3181. DEFINITIONS. As used in this subchapter:

(1) "District" means any district or authority created under Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, the principal purpose of which is, or that is principally engaged in, supplying water for the irrigation of agricultural lands.

(2) "Urban property" means land that:

(A) has been subdivided into town lots, town lots and blocks, or small parcels of the same general nature as town lots or town lots and blocks and is designed, intended, or suitable for residential or other nonagricultural purposes, as distinguished from farm acreage, and includes streets, alleys, parkways, parks, and railroad property and rights-of-way within that subdivided land; and

(B) is in a subdivision:

(i) that is within the corporate limits or extraterritorial jurisdiction of a municipality that has subdivision approval jurisdiction under Chapter 212, Local Government Code; and

(ii) for which a plat or map has been filed and recorded in the office of the county clerk of the county in which the subdivision or any part of the subdivision is located.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.005(a), eff. September 1, 2015.

Sec. 49.3182. CONDITIONS FOR EXCLUSION OF URBAN PROPERTY. Urban property that is located in a district may be excluded from the district as provided by this subchapter only after the following have been paid to the district:

(1) all taxes, assessments, and other charges of the district accrued on the property to be excluded, together with all interest and penalties accrued on those taxes, assessments, and charges;

(2) the proportionate part of the outstanding bonded indebtedness or indebtedness in connection with a loan from an agency of the United States for which the property proposed to be excluded is liable, as determined under this subchapter; and

(3) agreement on a reasonable determined amount to be paid by the municipality or other supplier of potable water to compensate the district for loss of revenue occasioned by the exclusion.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.005(a), eff. September 1, 2015.

Sec. 49.3183. APPLICATION FOR EXCLUSION. (a) The owner or owners of urban property in a district and subject to taxation by the district, and on which all amounts due the district under Section 49.3182(1) have been paid, may file a written and sworn application with the district to exclude that property from the district.

(b) The application must:

(1) include a sworn acknowledgment by the owner or owners of the property;

(2) describe the property to be excluded by identifying the lot or block number of the subdivision and the name or designation of the subdivision as shown on the recorded plat of the subdivision, or by some other method of identification; and

(3) state that the property is used or intended to be used for the purposes for which it was subdivided and is not used or intended to be used, wholly or partly, for agricultural purposes.

(c) A copy of the recorded map or plat of the subdivision must accompany the application and must clearly delineate the part of the subdivision, if less than the whole, to be excluded from the district.

(d) The applicant must also provide the district with evidence satisfactory to, or required by, the board of the applicant's:

(1) ownership of the property proposed to be excluded; and

(2) right to have the property excluded from the district.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.005(a), eff. September 1, 2015.

Sec. 49.3184. CONSIDERATION OF APPLICATION. (a) As soon as practicable after an application is filed, the board shall consider the application and inquire into all the facts relating to the application that the board considers necessary for determining whether a public hearing on the application should be held.

(b) After consideration and investigation, the board shall adopt an order approving further consideration of the application if the board finds that:

(1) all amounts due the district under Section 49.3182(1) up to the date of the filing of the application have been paid;

(2) the property described in the application:

(A) is owned by the applicant;

(B) is urban property and is not used or intended to be used for agricultural purposes; and

(C) will require a source of treated potable water from the municipality in which the subdivision is located; and

(3) the exclusion of the property will not cut off the district or its facilities from ready and convenient access to other land remaining in the district for irrigation or other district purposes.

(c) If the board is unable to make any one of the findings under Subsection (b), it shall adopt a resolution rejecting the application.

(d) A resolution of the board rejecting an application is final and not subject to review by any other body, tribunal, or authority.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.005(a), eff. September 1, 2015.

Sec. 49.3185. DETERMINATION OF PROPORTIONATE AMOUNT OF INDEBTEDNESS. (a) If the board approves further consideration of an application, the board shall determine the proportionate amount of the bonded or contractual indebtedness for which the property to be excluded is liable as provided by this section.

(b) If the district has outstanding bonded indebtedness, the board shall obtain from the chief appraiser a certified copy of the appraised value of all the property to be excluded for the five years preceding the year in which the application is filed, as shown by the tax rolls of the district, and the appraised value of all taxable property in the district according to the most recent tax rolls of the district. The part of the district's total outstanding bonded indebtedness to be paid by the applicant as a condition precedent to the exclusion of the property is that proportion of the indebtedness, including unpaid interest computed to the date of the order, that the appraised value of the property to be excluded bears to the appraised value of all taxable property in the district according to the most recent tax rolls.

(c) If the district has contractual or other indebtedness being repaid on the benefit tax basis, the board shall obtain from the appropriate records the manner in which the tax is assessed, and from those records the district shall calculate the part of the total outstanding indebtedness of the district remaining to be paid that is attributable to the property to be excluded.

(d) The order of the board approving further consideration of the application must also state the amounts required to be paid under Section 49.3182 as a condition of the exclusion of the property.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.005(a), eff. September 1, 2015.

Sec. 49.3186. DEADLINE FOR PAYMENT OF AMOUNTS DUE. The order of the board approving further consideration of the application has no force or effect and no further proceeding may be held on the application unless the applicant deposits with the district the amounts due under Section 49.3182 not later than:

(1) the 20th day after the date on which the order was adopted; or

(2) the expiration of a period not to exceed 30 days after the date on which the order was adopted as ordered by the board.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.005(a), eff. September 1, 2015.

Sec. 49.3187. NOTICE AND HEARING. (a) If the deposit is made within the time provided by Section 49.3186, the board shall order a public hearing to be held on the application at the regular office of the district not less than 15 or more than 30 days after the date of the hearing order.

(b) The board shall have notice of the hearing posted in a conspicuous place in the office of the district and at the courthouse of the county in which the property proposed to be excluded is situated.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.005(a), eff. September 1, 2015.

Sec. 49.3188. RESOLUTION EXCLUDING URBAN PROPERTY OR REJECTING APPLICATION; EFFECTS OF EXCLUSION. (a) If, as a result of a hearing ordered under Section 49.3187, the board finds that the owners of a majority in acreage of the urban property do not desire irrigation of that property or that the urban property is not used or intended to be used for agricultural purposes, the board shall adopt a resolution setting forth those findings and excluding the urban property or the part of the urban property as to which the findings are made.

(b) If any canals, ditches, pipelines, pumps, or other facilities of the district are located on land excluded under the resolution, the exclusion does not affect or interfere with any district rights to maintain and continue operation of the facilities as located to service land remaining in the district.

(c) A copy of the resolution excluding urban property from the district certified to and acknowledged by the secretary of the board must be recorded by the district in the deed records of the county in which the excluded property is located as evidence of the exclusion.

(d) On the passage of the resolution:

(1) the property excluded does not constitute a part of the district; and

(2) the owner of the excluded property:

(A) has no further liability to the district or for any bonded or other indebtedness of the district; and

(B) is not subject to further taxation by the district.

(e) If the board determines from the hearing that for any reason the application should not be granted, the board shall adopt a resolution rejecting the application, and the deposit made by the applicant is subject to withdrawal by the applicant or on the board's order.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.005(a), eff. September 1, 2015.

Sec. 49.3189. CONVERSION OF WATER RIGHTS. After a district excludes land from the district's territory under this subchapter, the municipality or other municipal supplier that proposes to serve the land with a potable water supply may petition the district to convert the proportionate water rights previously allocated for the land from irrigation use rights to municipal use rights for the use

and benefit of the municipality or other municipal supplier. The district shall compute the proportionate water rights available and shall initiate administrative proceedings to convert the irrigation use rights to municipal use rights. Before the district is obligated to initiate the administrative proceedings, the municipality or other municipal supplier must deposit with the district the amount that the district estimates the district will incur as reasonable expenses and attorney's fees in those proceedings. On approval of the conversion by the commission, the district shall deliver the water to the municipality or other municipal supplier in the manner those entities may agree to under this code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.005(a), eff. September 1, 2015.

SUBCHAPTER K. DISSOLUTION

Sec. 49.321. DISSOLUTION AUTHORITY. After notice and hearing, the commission may dissolve any district that is inactive for a period of five consecutive years and has no outstanding bonded indebtedness.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.322. NOTICE OF HEARING. (a) The commission shall give notice of the dissolution hearing that briefly describes the reasons for the proceeding.

(b) The notice shall be published once each week for two consecutive weeks before the day of hearing in a newspaper having general circulation in the county or counties in which the district is located. The first publication shall be 30 days before the day of the hearing.

(c) The commission shall give notice of the hearing by first class mail addressed to the directors of the district according to the last record on file with the executive director.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.3225. ORDER WITHOUT HEARING. (a) The commission may

adopt an order under Section 49.324 without conducting a hearing if it receives a petition under this section from:

(1) the owners of the majority in value of the land in the district, as shown by the most recent certified tax roll of the central appraisal district of the county or counties in which the district is located; or

(2) the board of directors of the district.

(b) Not later than the 10th day after the date a petition is submitted under Subsection (a), the petitioners shall:

(1) provide notice of the petition by certified mail:

(A) to all the landowners in the district, as shown by the most recent certified tax roll of the central appraisal district of the county or counties in which the district is located, who did not sign the petition; and

(B) if the petition was submitted by persons described by Subsection (a)(1), to the board of directors; and

(2) certify in writing to the commission that the requirements of Subdivision (1) have been met.

(c) A notice provided under Subsection (b)(1) must state that the landowner may file a written objection to the dissolution of the district not later than the 30th day after the date the notice was received.

(d) If a landowner files a written objection to the dissolution of the district with the commission within the period specified in the notice, the commission shall hold a hearing on the dissolution of the district. The commission shall mail notice of the hearing by first class mail to:

(1) the petitioners, and the board of directors if the board of directors did not submit the petition; and

(2) each landowner who timely filed a written objection to the dissolution.

(e) A district may not be dissolved under this section or any other provision of law if the district:

(1) has any outstanding bonded indebtedness unless the bonded indebtedness is assumed by a third party, or repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds;

(2) has a contractual obligation to pay money unless the obligation is assumed by a third party, fully paid in accordance with the contract, or waived by the obligee; or

(3) owns, operates, or maintains public works, facilities, or improvements, unless the ownership, operation, or maintenance is assumed by a third party.

Added by Acts 2019, 86th Leg., R.S., Ch. 539 (H.B. 2914), Sec. 1, eff. September 1, 2019.

Sec. 49.323. INVESTIGATION. The executive director shall investigate the facts and circumstances of the district to be dissolved and the result of the investigation shall be included in a written report.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.324. ORDER OF DISSOLUTION. The commission may enter an order dissolving the district at the conclusion of the hearing if it finds that the district has performed none of the functions for which it was created for a period of five consecutive years before the day of the proceeding and that the district has no outstanding bonded indebtedness.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.325. CERTIFIED COPY OF ORDER. The commission shall file a certified copy of the order of dissolution of the district in the deed records of the county or counties in which the district is located. If the particular district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the secretary of state.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.326. APPEALS. (a) Appeals from a commission order dissolving a district shall be filed and heard in the district court of any of the counties in which the land is located.

(b) The trial on appeal shall be de novo and the substantial evidence rule shall not apply.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.327. ASSETS ESCHEAT TO STATE. Upon the dissolution of a district by the commission, all assets of the district shall escheat to the State of Texas. The assets shall be administered by the comptroller and shall be disposed of in the manner provided by Chapter 74, Property Code.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 20.11, eff. Sept. 1, 1997.

SUBCHAPTER L. FIRE DEPARTMENTS

Sec. 49.351. FIRE DEPARTMENTS. (a) A district providing potable water or sewer services or facilities may, separately or jointly with another district, municipality, or other political subdivision, establish, operate, and maintain, finance with ad valorem taxes, mandatory fees, or voluntary contributions, and issue bonds for a fire department to perform all fire-fighting services within the district as provided in this subchapter and may provide for the construction and purchase of necessary buildings, facilities, land, and equipment and the provision of an adequate water supply.

(b) After complying with the requirements of this section, the district or districts shall provide an adequate system and water supply for fire-fighting purposes, may purchase necessary land, may construct and purchase necessary buildings, facilities, and equipment, and may employ or contract with a fire department to employ all necessary personnel including supervisory personnel to operate the fire department.

(c) For financing a plan approved in accordance with this section, bonds and ad valorem taxes must be authorized and may be issued or imposed as provided by law for the authorization and issuance of other bonds and the authorization and imposition of other ad valorem taxes of the district.

(d) Two or more districts may contract to operate a joint fire department for their districts and shall include in the contract a system for joint administration and operation of the fire department, the extent of services to be provided, a method for funding the

department from funds of each district, and any other terms and conditions the parties consider necessary.

(e) A district may contract with any other person to perform fire-fighting services within the district.

(f) Before a district imposes an ad valorem tax or issues bonds payable wholly or partly from ad valorem taxes to finance the establishment of a fire department, contracts to operate a joint fire department, or contracts with another person to perform fire-fighting services within the district, the district must comply with Subsections (g), (h), and (i).

(g) A district or districts proposing to act jointly shall develop a detailed plan for the establishment, operation, and maintenance of the proposed department, including a detailed presentation of all financial requirements. If a district is entering into a contract under Subsection (e), the district shall develop a plan that describes the contract and includes a presentation of the financial requirements under the contract. A plan required by this subsection may be included in a plan or report otherwise required by this title for the creation of a district or may be submitted to the commission for approval at any time after the creation of the district.

(h) If a plan was not approved by the commission at the time of the district's creation, after adoption of the plan and any contract by the board, the plan and financial presentation, together with any contract and a written report in a form prescribed by the executive director describing existing fire departments and fire-fighting services available within 25 miles of the boundaries of the district, shall be submitted to the executive director for consideration by the commission under rules adopted by the commission. Before the commission approves the application, it must find that it is economically feasible for the district to implement the plan and meet the provisions of any contract and shall take into consideration in giving its approval the general financial condition of the district and the economic feasibility of the district carrying out the plan or meeting the obligations of the contract. A plan approved by the commission as part of the creation of a district does not require further commission approval unless the district materially alters the plan.

(i) After approval of a plan by the commission, the district shall hold an election to approve the plan, approve bonds payable

wholly or partly from ad valorem taxes, and impose ad valorem taxes for financing the plan. The election may be held in conjunction with an election required by Section 49.102.

(j) The operation of a fire department or provision of fire-fighting services is an essential public necessity, and a district may discontinue any and all services, including water and sewer service, to any person who fails to timely pay fire department service fees or any other assessment adopted by the district to support the fire department or the provision of fire-fighting services.

(k) In this section, "fire-fighting services" means all of the customary and usual services of a fire department, including fire suppression, fire prevention, training, safety education, maintenance, communications, medical emergency services, photography, and administration.

(l) A district providing potable water or sewer service to household users may, as part of its billing process, collect from its customers a voluntary contribution on behalf of organizations providing fire-fighting services to the district. A district that chooses to collect a voluntary contribution under this subsection must give reasonable notice to its customers that the contribution is voluntary. Water and sewer service may not be terminated as a result of failure to pay the voluntary contribution.

(m) If a customer makes a partial payment of a district bill for water or sewer service and includes with the payment a voluntary contribution for fire-fighting services under Subsection (l), the district shall apply the voluntary contribution first to the bill for water or sewer service, including any interest or penalties imposed. The district shall use any amount remaining for fire-fighting services.

(n) Notwithstanding any other provision of this section, a district may not charge a fee to a recreational vehicle park, as defined by Section 13.087, on the basis of connections the park provides for the park's transient customers. A fee charged to a recreational vehicle park must be based on the park's nonsubmetered master meter connection.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 23, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1423, Sec. 23, eff. June 17, 2001;

Acts 2003, 78th Leg., ch. 248, Sec. 24, eff. June 18, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 20, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 991 (H.B. 2152), Sec. 2, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(62), eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 3, eff. September 1, 2019.

Sec. 49.352. MUNICIPAL SYSTEM IN UNSERVED AREA. (a) This section applies only to a home-rule municipality that:

(1) is located in a county with a population of more than 1.75 million that is adjacent to a county with a population of more than 1 million; and

(2) has within its boundaries a part of a district.

(b) If a district does not establish a fire department under this subchapter, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment.

(c) For purposes of this section, a municipality may obtain single certification in the manner provided by Section 13.255, except that the municipality may file an application with the Public Utility Commission of Texas to grant single certification immediately after the municipality provides notice of intent to provide service as required by Section 13.255(b).

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.33, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.86, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 86, eff. September 1, 2013.

Sec. 49.353. MUNICIPAL CONTRACT FOR FIRE-FIGHTING SERVICES IN CERTAIN COUNTIES. (a) In this section, "fire-fighting services" has the meaning assigned by Section 49.351.

(b) This section applies only to a district:

(1) located wholly or partly in a county with a population of more than 3.3 million; and

(2) in whose territory an emergency services district that provides fire-fighting services to all or part of the district is wholly or partly located.

(c) Notwithstanding Section 43.0751(f)(2)(B)(iii), Local Government Code, as part of a strategic partnership agreement entered into on or before December 31, 2006, under Section 43.0751, Local Government Code, a district may contract with a municipality whose fire department, on the date the agreement is entered into, has an Insurance Services Office (ISO) Class 1 Public Protection Classification Rating or comparable rating recognized by the state fire marshal for the provision of fire-fighting services to all or part of the district's territory, without the authorization of the emergency services district that provides fire-fighting services to the district immediately before the date on which the agreement takes effect.

(d) If a district enters into a strategic partnership agreement with a municipality that includes the provision of fire-fighting services under this section, the territory of the district annexed by the municipality for limited purposes and to be served by the municipality under the agreement shall be disannexed from the emergency services district in the manner provided by Section 775.022, Health and Safety Code, for territory that is annexed by a municipality for full purposes.

(e) This section does not apply to a strategic partnership agreement that is:

(1) entered into after December 31, 2006; or

(2) amended after December 31, 2006, to include the provision of fire-fighting services.

Added by Acts 2009, 81st Leg., R.S., Ch. 671 (H.B. 2348), Sec. 1, eff. June 19, 2009.

SUBCHAPTER M. NOTICES, REPORTS, AND BANKRUPTCY

Sec. 49.451. POSTING SIGNS IN THE DISTRICT. (a) A district subject to the notice requirements of Section 49.452 shall, within 30 days after the effective date of this section or the creation of the district, post signs indicating the existence of the district at two principal entrances to the district.

(b) The size and exact location of the information contained on the signs shall be determined by the executive director.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.452. NOTICE TO PURCHASERS. (a) (1) Any person who proposes to sell or convey real property located in a district created under this title or by a special Act of the legislature that is providing or proposing to provide, as the district's principal function, water, sanitary sewer, drainage, and flood control or protection facilities or services, or any of these facilities or services that have been financed or are proposed to be financed with bonds of the district payable in whole or part from taxes of the district, or by imposition of a standby fee, if any, to household or commercial users, other than agricultural, irrigation, or industrial users, and which district includes less than all the territory in at least one county and which, if located within the corporate area of a city, includes less than 75 percent of the incorporated area of the city or which is located outside the corporate area of a city in whole or in substantial part, must first give to the purchaser the written notice provided in this section.

(2) The provisions of this section shall not be applicable to:

(A) transfers of title under any type of lien foreclosure;

(B) transfers of title by deed in cancellation of indebtedness secured by a lien upon the property conveyed;

(C) transfers of title by reason of a will or probate proceedings; or

(D) transfers of title to a governmental entity.

(b) The prescribed notice for districts located in whole or in part in the extraterritorial jurisdiction of one or more home-rule municipalities and not located within the corporate boundaries of a

municipality shall be executed by the seller and shall read as follows:

"The real property, described below, that you are about to purchase is located in the _____ District. The district has taxing authority separate from any other taxing authority and may, subject to voter approval, issue an unlimited amount of bonds and levy an unlimited rate of tax in payment of such bonds. As of this date, the rate of taxes levied by the district on real property located in the district is $_____ on each $100 of assessed valuation. If the district has not yet levied taxes, the most recent projected rate of tax, as of this date, is $_____ on each $100 of assessed valuation. The total amount of bonds, excluding refunding bonds and any bonds or any portion of bonds issued that are payable solely from revenues received or expected to be received under a contract with a governmental entity, approved by the voters and which have been or may, at this date, be issued is $_____, and the aggregate initial principal amounts of all bonds issued for one or more of the specified facilities of the district and payable in whole or in part from property taxes is $_____.

"The district has the authority to adopt and impose a standby fee on property in the district that has water, sanitary sewer, or drainage facilities and services available but not connected and which does not have a house, building, or other improvement located thereon and does not substantially utilize the utility capacity available to the property. The district may exercise the authority without holding an election on the matter. As of this date, the most recent amount of the standby fee is $_____. An unpaid standby fee is a personal obligation of the person that owned the property at the time of imposition and is secured by a lien on the property. Any person may request a certificate from the district stating the amount, if any, of unpaid standby fees on a tract of property in the district.

"The district is located in whole or in part in the extraterritorial jurisdiction of the City of _____. By law, a district located in the extraterritorial jurisdiction of a municipality may be annexed without the consent of the district or the voters of the district. When a district is annexed, the district is dissolved.

"The purpose of this district is to provide water, sewer, drainage, or flood control facilities and services within the

district through the issuance of bonds payable in whole or in part from property taxes. The cost of these utility facilities is not included in the purchase price of your property, and these utility facilities are owned or to be owned by the district. The legal description of the property you are acquiring is as follows:

_____

_____
(Date)

_____
Signature of Seller

PURCHASER IS ADVISED THAT THE INFORMATION SHOWN ON THIS FORM IS SUBJECT TO CHANGE BY THE DISTRICT AT ANY TIME. THE DISTRICT ROUTINELY ESTABLISHES TAX RATES DURING THE MONTHS OF SEPTEMBER THROUGH DECEMBER OF EACH YEAR, EFFECTIVE FOR THE YEAR IN WHICH THE TAX RATES ARE APPROVED BY THE DISTRICT. PURCHASER IS ADVISED TO CONTACT THE DISTRICT TO DETERMINE THE STATUS OF ANY CURRENT OR PROPOSED CHANGES TO THE INFORMATION SHOWN ON THIS FORM.

"The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or prior to execution of a binding contract for the purchase of the real property described in such notice or at closing of purchase of the real property.

_____

_____
(Date)

_____
Signature of Purchaser

"(Note: Correct district name, tax rate, bond amounts, and legal description are to be placed in the appropriate space.) Except for notices included as an addendum or paragraph of a purchase contract, the notice shall be executed by the seller and purchaser, as indicated. If the district does not propose to provide one or more of the specified facilities and services, the appropriate purpose may be eliminated. If the district has not yet levied taxes, a statement of the district's most recent projected rate of tax is to be placed in the appropriate space. If the district does not have approval from the commission to adopt and impose a standby fee, the second paragraph of the notice may be deleted. For the purposes of the notice form required to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase, a seller and any agent, representative, or person acting on the

seller's behalf may modify the notice by substitution of the words 'January 1, ___' for the words 'this date' and place the correct calendar year in the appropriate space."

(c) The prescribed notice for districts located in whole or in part within the corporate boundaries of a municipality shall be executed by the seller and shall read as follows:

"The real property, described below, that you are about to purchase is located in the _____ District. The district has taxing authority separate from any other taxing authority and may, subject to voter approval, issue an unlimited amount of bonds and levy an unlimited rate of tax in payment of such bonds. As of this date, the rate of taxes levied by the district on real property located in the district is $_____ on each $100 of assessed valuation. If the district has not yet levied taxes, the most recent projected rate of tax, as of this date, is $_____ on each $100 of assessed valuation. The total amount of bonds, excluding refunding bonds and any bonds or any portion of bonds issued that are payable solely from revenues received or expected to be received under a contract with a governmental entity, approved by the voters and which have been or may, at this date, be issued is $_____, and the aggregate initial principal amounts of all bonds issued for one or more of the specified facilities of the district and payable in whole or in part from property taxes is $_____.

"The district has the authority to adopt and impose a standby fee on property in the district that has water, sanitary sewer, or drainage facilities and services available but not connected and which does not have a house, building, or other improvement located thereon and does not substantially utilize the utility capacity available to the property. The district may exercise the authority without holding an election on the matter. As of this date, the most recent amount of the standby fee is $_____. An unpaid standby fee is a personal obligation of the person that owned the property at the time of imposition and is secured by a lien on the property. Any person may request a certificate from the district stating the amount, if any, of unpaid standby fees on a tract of property in the district.

"The district is located in whole or in part within the corporate boundaries of the City of _____. The taxpayers of the district are subject to the taxes imposed by the municipality and by the district until the district is dissolved. By law, a district

located within the corporate boundaries of a municipality may be dissolved by municipal ordinance without the consent of the district or the voters of the district.

"The purpose of this district is to provide water, sewer, drainage, or flood control facilities and services within the district through the issuance of bonds payable in whole or in part from property taxes. The cost of these utility facilities is not included in the purchase price of your property, and these utility facilities are owned or to be owned by the district. The legal description of the property you are acquiring is as follows:

_____

_____

(Date)

_____

Signature of Seller

PURCHASER IS ADVISED THAT THE INFORMATION SHOWN ON THIS FORM IS SUBJECT TO CHANGE BY THE DISTRICT AT ANY TIME. THE DISTRICT ROUTINELY ESTABLISHES TAX RATES DURING THE MONTHS OF SEPTEMBER THROUGH DECEMBER OF EACH YEAR, EFFECTIVE FOR THE YEAR IN WHICH THE TAX RATES ARE APPROVED BY THE DISTRICT. PURCHASER IS ADVISED TO CONTACT THE DISTRICT TO DETERMINE THE STATUS OF ANY CURRENT OR PROPOSED CHANGES TO THE INFORMATION SHOWN ON THIS FORM.

"The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or prior to execution of a binding contract for the purchase of the real property described in such notice or at closing of purchase of the real property.

_____

_____

(Date)

_____

Signature of Purchaser

"(Note: Correct district name, tax rate, bond amounts, and legal description are to be placed in the appropriate space.) Except for notices included as an addendum or paragraph of a purchase contract, the notice shall be executed by the seller and purchaser, as indicated. If the district does not propose to provide one or more of the specified facilities and services, the appropriate purpose may be eliminated. If the district has not yet levied taxes, a statement of the district's most recent projected rate of tax is to be placed in the appropriate space. If the district does not have

approval from the commission to adopt and impose a standby fee, the second paragraph of the notice may be deleted. For the purposes of the notice form required to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase, a seller and any agent, representative, or person acting on the seller's behalf may modify the notice by substitution of the words 'January 1,_____' for the words 'this date' and place the correct calendar year in the appropriate space."

(d) The prescribed notice for districts that are not located in whole or in part within the corporate boundaries of a municipality or the extraterritorial jurisdiction of one or more home-rule municipalities shall be executed by the seller and shall read as follows:

"The real property, described below, that you are about to purchase is located in the _____ District. The district has taxing authority separate from any other taxing authority and may, subject to voter approval, issue an unlimited amount of bonds and levy an unlimited rate of tax in payment of such bonds. As of this date, the rate of taxes levied by the district on real property located in the district is $_____ on each $100 of assessed valuation. If the district has not yet levied taxes, the most recent projected rate of tax, as of this date, is $_____ on each $100 of assessed valuation. The total amount of bonds, excluding refunding bonds and any bonds or any portion of bonds issued that are payable solely from revenues received or expected to be received under a contract with a governmental entity, approved by the voters and which have been or may, at this date, be issued is $_____, and the aggregate initial principal amounts of all bonds issued for one or more of the specified facilities of the district and payable in whole or in part from property taxes is $_____.

"The district has the authority to adopt and impose a standby fee on property in the district that has water, sanitary sewer, or drainage facilities and services available but not connected and which does not have a house, building, or other improvement located thereon and does not substantially utilize the utility capacity available to the property. The district may exercise the authority without holding an election on the matter. As of this date, the most recent amount of the standby fee is $_____. An unpaid standby fee is a personal obligation of the person that owned the property at the time of imposition and is secured by a lien on the property. Any

person may request a certificate from the district stating the amount, if any, of unpaid standby fees on a tract of property in the district.

"The purpose of this district is to provide water, sewer, drainage, or flood control facilities and services within the district through the issuance of bonds payable in whole or in part from property taxes. The cost of these utility facilities is not included in the purchase price of your property, and these utility facilities are owned or to be owned by the district. The legal description of the property you are acquiring is as follows:

_____

_____

(Date)

_____

Signature of Seller

PURCHASER IS ADVISED THAT THE INFORMATION SHOWN ON THIS FORM IS SUBJECT TO CHANGE BY THE DISTRICT AT ANY TIME. THE DISTRICT ROUTINELY ESTABLISHES TAX RATES DURING THE MONTHS OF SEPTEMBER THROUGH DECEMBER OF EACH YEAR, EFFECTIVE FOR THE YEAR IN WHICH THE TAX RATES ARE APPROVED BY THE DISTRICT. PURCHASER IS ADVISED TO CONTACT THE DISTRICT TO DETERMINE THE STATUS OF ANY CURRENT OR PROPOSED CHANGES TO THE INFORMATION SHOWN ON THIS FORM.

"The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or prior to execution of a binding contract for the purchase of the real property described in such notice or at closing of purchase of the real property.

_____

_____

(Date)

_____

Signature of Purchaser

"(Note: Correct district name, tax rate, bond amounts, and legal description are to be placed in the appropriate space.) Except for notices included as an addendum or paragraph of a purchase contract, the notice shall be executed by the seller and purchaser, as indicated. If the district does not propose to provide one or more of the specified facilities and services, the appropriate purpose may be eliminated. If the district has not yet levied taxes, a statement of the district's most recent projected rate of tax is to be placed in the appropriate space. If the district does not have

approval from the commission to adopt and impose a standby fee, the second paragraph of the notice may be deleted. For the purposes of the notice form required to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase, a seller and any agent, representative, or person acting on the seller's behalf may modify the notice by substitution of the words 'January 1, _____' for the words 'this date' and place the correct calendar year in the appropriate space."

(e) If the law relating to annexation or district dissolution is amended and causes inaccuracies in the content of the notices prescribed by this section, the district shall revise the content of the notices to accurately reflect current law.

(f) The notice required by this section shall be given to the prospective purchaser prior to execution of a binding contract of sale and purchase either separately or as an addendum or paragraph of a purchase contract. In the event a contract of purchase and sale is entered into without the seller providing the notice required by this subsection, the purchaser shall be entitled to terminate the contract. If, however, the seller furnishes the required notice at or prior to closing the purchase and sale contract and the purchaser elects to close even though such notice was not timely furnished prior to execution of the contract, it shall be conclusively presumed that the purchaser has waived all rights to terminate the contract and recover damages or other remedies or rights under the provisions of this section. Notwithstanding any provision of this subchapter to the contrary, all sellers, title companies, real estate brokers, and examining attorneys, and any agent, representative, or person acting on their behalf, shall not be liable for damages under the provisions of either Subsection (o) or (p) or liable for any other damages to any person for:

(1) failing to provide the notice required by this section to a purchaser prior to execution of a binding contract of a purchase and sale or at or prior to the closing of the purchase and sale contract when the district has not filed the information form and map or plat as required under Section 49.455; or

(2) unintentionally providing a notice prescribed by this section that is not the correct notice under the circumstances prior to execution of a binding contract of purchase and sale or at or prior to the closing of the purchase and sale contract.

(g) The purchaser shall sign the notice or purchase contract

including such notice to evidence the receipt of notice.

(h) At the closing of purchase and sale, a separate copy of such notice with current information shall be executed by the seller and purchaser, acknowledged, and thereafter recorded in the deed records of the county in which the property is located. For the purposes of this section, all sellers, title companies, real estate brokers, and examining attorneys, and any agent, representative, or person acting on their behalf, shall be entitled to rely on the accuracy of the information form and map or plat as last filed by each district under Section 49.455 or the information contained in or shown on the notice form issued by the district under Section 49.453 in completing the notice form to be executed by the seller and purchaser at the closing of purchase and sale. Any information taken from the information form or map or plat as last filed by each district and the information contained in or shown on the notice form issued by the district under Section 49.453 shall be, for purposes of this section, conclusively presumed as a matter of law to be correct. All subsequent sellers, purchasers, title insurance companies, real estate brokers, examining attorneys, and lienholders shall be entitled to rely upon the information form and map or plat filed by the district or the notice form issued by the district under Section 49.453.

(i) For the purposes of this section, an executory contract of purchase and sale having a performance period of more than six months shall be considered a sale under Subsection (a).

(j) For the purposes of the notice form to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase, a seller and any agent, representative, or person acting in the seller's behalf may modify the notice by substitution of the words "January 1, ___" for the words "this date" and place the correct calendar year in the appropriate space. All sellers, and all persons completing the prescribed notice in the sellers' behalf, shall be entitled to rely on the information contained in or shown on the information form and map or plat filed of record by the district under Section 49.455 in completing the prescribed form to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase. Except as otherwise provided in Subsection (h), any information taken from the information form or map or plat filed of record by the district in effect as of January 1 of each year shall be, for purposes of the notice to be given to the prospective

purchaser prior to execution of a binding contract of sale and purchase, conclusively presumed as a matter of law to be correct for the period January 1 through December 31 of such calendar year. A seller and any persons completing the prescribed notice in the seller's behalf may provide more recent information, if available, than the information contained in or shown on the information form and map or plat filed of record by the district under Section 49.455 in effect as of January 1 of each year in completing the prescribed form to be given to the purchaser prior to execution of a binding contract of sale and purchase. Nothing contained in the preceding sentence shall be construed to create an affirmative duty on the part of a seller or any persons completing the prescribed notice in the seller's behalf to provide more recent information than the information taken from the information form and map or plat filed of record by the district as of January 1 of each year in completing the prescribed notice to be given to the purchaser prior to execution of a binding contract of sale and purchase. All subsequent sellers, purchasers, title insurance companies, real estate brokers, examining attorneys, and lienholders shall be entitled to rely upon the information form and map or plat filed by the district.

(k) If such notice is given at closing as provided in Subsection (h), a purchaser, or the purchaser's heirs, successors, or assigns, shall not be entitled to maintain any action for damages or maintain any action against a seller, title insurance company, real estate brokers, or lienholder, or any agent, representative, or person acting in their behalf, by reason of use by the seller of the information filed for record by the district or reliance by the seller on the filed plat and filed legal description of the district in determining whether the property to be sold and purchased is within the district. No action may be maintained against any title company for failure to disclose the inclusion of the described real property within a district when the district has not filed for record the information form, map, or plat with the clerk of the county or counties in which the district is located.

(l) Any purchaser who purchases any real property in a district and who thereafter sells or conveys the same shall on closing of such subsequent sale be conclusively considered as having waived any prior right to damages under this section.

(m) It is the express intent of this section that all sellers, title insurance companies, examining attorneys, vendors of property

and tax information, real estate brokers, and lienholders, and any agent, representative, or person acting on their behalf, shall be entitled to rely on the accuracy of the information form and map or plat as last filed by each district or the information contained in or shown on the notice form issued by the district under Section 49.453, or for the purposes of the notice to be given the purchaser prior to execution of a binding contract of sale and purchase the information contained in or shown on the information form and map or plat filed of record by the district in effect as of January 1 of each year for the period January 1 through December 31 of such calendar year.

(n) Except as otherwise provided in Subsection (f), if any sale or conveyance of real property within a district is not made in compliance with the provisions of this section, the purchaser may institute a suit for damages under the provisions of either Subsection (o) or (p).

(o) A purchaser of real property covered by the provisions of this section, if the sale or conveyance of the property is not made in compliance with this section, may institute a suit for damages in the amount of all costs relative to the purchase of the property plus interest and reasonable attorney's fees. The suit for damages may be instituted jointly or severally against the person, firm, corporation, partnership, organization, business trust, estate, trust, association, or other legal entity that sold or conveyed the property to the purchaser. Following the recovery of damages under this subsection, the amount of the damages shall first be paid to satisfy all unpaid obligations on each outstanding lien or liens on the property and the remainder of the damage amount shall be paid to the purchaser. On payment of all damages respectively to the lienholders and purchaser, the purchaser shall reconvey the property to the seller.

(p) A purchaser of real property covered by the provisions of this section, if the sale or conveyance of the property is not made in compliance with this section, may institute a suit for damages in an amount not to exceed $5,000, plus reasonable attorney's fees.

(q) A purchaser is not entitled to recover damages under both Subsections (o) and (p), and entry of a final decision awarding damages to the purchaser under either Subsection (o) or (p) shall preclude the purchaser from recovering damages under the other subsection. Notwithstanding any part or provision of the general or

special laws or the common law of the state to the contrary, the relief provided under Subsections (o) and (p) shall be the exclusive remedies for a purchaser aggrieved by the seller's failure to comply with the provisions of this section. Any action for damages shall not, however, apply to, affect, alter, or impair the validity of any existing vendor's lien, mechanic's lien, or deed of trust lien on the property.

(r) A suit for damages under the provisions of this section must be brought within 90 days after the purchaser receives the first district tax notice or within four years after the property is sold or conveyed to the purchaser, whichever time occurs first, or the purchaser loses the right to seek damages under this section.

(s) Notwithstanding any provisions of this subchapter to the contrary, a purchaser may not recover damages of any kind under this section if that person:

(1) purchases an equity in real property and in conjunction with the purchase assumes any liens, whether purchase money or otherwise; and

(2) does not require proof of title by abstract, title policy, or any other proof of title.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 715, Sec. 1, eff. Sept. 1, 1999.

Sec. 49.453. NOTICE FORM FROM DISTRICT. (a) A district covered by Section 49.452 shall also maintain in the district office the particular form of Notice to Purchasers required by Section 49.452 to be furnished by a seller to a purchaser of real property in that district and shall, upon written request of any person, issue the notice form completed by a district with all information required to be furnished by the district. A notice form issued by a district under the provisions of this section shall include a written statement that the notice form is being issued by the district, the date of its issuance, and the district's telephone number. A district shall not be required to orally provide the information.

(b) A district may charge a reasonable fee as determined by the district not to exceed $10 for the issuance of a notice form pursuant to Subsection (a). The notice form shall be delivered by regular mail or made available at the district's office. If a district is

requested to deliver the notice form to a person by an alternative method, the district may impose a charge not to exceed the actual cost of such delivery.

(c) A district may delegate the responsibility for issuance of the particular form of Notice to Purchasers to an employee or agent of the district. A district shall file with the commission the name, address, and telephone number of the employee or agent of the district responsible for issuance of the notice forms and shall notify the commission in writing within seven days after there is a change to the information required to be filed with the commission under the provisions of this subsection.

(d) Any notice issued by the district shall contain the information effective as of the date of its issuance.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.454. NOTICE OF UNPAID STANDBY FEES. (a) A district covered by Section 49.452 shall, on the written request of any person, issue a certificate stating the amount of any unpaid standby fees, including interest on the fees, that have been assessed against a tract of property in the district. The district may charge a fee not to exceed $10 for each certificate. A certificate issued through fraud or collusion is void.

(b) If the district issues a certificate containing an erroneous statement under Subsection (a) and the owner of the property transfers the property to a good faith purchaser for value, the lien on the property provided by Section 49.231(k) is extinguished to the extent of the error.

(c) This section does not affect the liability for any unpaid standby fees of the former owner of the undeveloped property under Section 49.231(k).

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

Sec. 49.455. FILING INFORMATION. (a) The board covered by the provisions of Section 49.452 shall file with the county clerk in each of the counties in which all or part of the district is located a duly affirmed and acknowledged information form that includes the information required in Subsection (b), and a complete and accurate

map or plat showing the boundaries of the district.

(b) The information form filed by a district under this section shall include:

(1) the name of the district;

(2) the complete and accurate legal description of the boundaries of the district;

(3) the most recent rate of district taxes on property located in the district;

(4) the total amount of bonds that have been approved by the voters and which may be issued by the district (excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity);

(5) the aggregate initial principal amount of all bonds of the district payable in whole or part from taxes (excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity) that have been previously issued;

(6) whether a standby fee is imposed by the district and, if so, the amount of the standby fee;

(7) the date on which the election to confirm the creation of the district was held if such was required;

(8) a statement of the functions performed or to be performed by the district; and

(9) the particular form of Notice to Purchasers required by Section 49.452 to be furnished by a seller to a purchaser of real property in that district completed by the district with all information required to be furnished by the district.

If a district has not yet levied taxes, a statement to such effect together with the district's most recent projected rate of debt service tax shall be substituted for Subdivisions (3) and (4).

(c) The information form and map or plat required by this section shall be signed by a majority of the members of the board and by each such officer affirmed and acknowledged before it is filed with the county clerk, and each amendment made to an information form or map shall also be signed by the members of the board and by each such officer affirmed and acknowledged before it is filed with the county clerk.

(d) The information form required by this section shall be filed with the county clerk within 48 hours after the district is

officially created. For purposes of this section, the words "officially created" mean the date and hour in which the results of the election to confirm the creation of the district are declared.

(e) Within seven days after there is a change in any of the information contained in the district information form, map, or plat, the district shall file an amendment to the information form, map, or plat setting forth the changes made.

(f) Any person who affirms the corrections and accuracy of and acknowledges an information form, map, or plat, or any amendment to an information form, map, or plat that includes information that is inaccurate or incorrect shall be guilty of a misdemeanor and shall be fined not less than $100 nor more than $1,000 for each violation.

(g) If a district fails to file the information required by this section in the time required, the executive director may request the state attorney general or the district or county attorney of the county in which the district is located to seek a writ of mandamus to force the board to prepare and file the necessary information.

(h) Any member of a governing board who wilfully fails or refuses to join in filing an information form, map, or plat or an amendment to an information form, map, or plat under this section shall be guilty of a misdemeanor and shall be fined not less than $100 nor more than $1,000 for each violation. A member of a governing board is presumed to have wilfully failed or refused to join in the filing of an information form, map, or plat or an amendment to an information form, map, or plat if that member was present at the meeting at which the information included in the information form, map, or plat or amendment to the information form, map, or plat was adopted.

(i) If a district covered by this section is dissolved, annexed to another local government, or consolidated with another district, the members of the board shall file a statement of this fact together with the effective date of the dissolution, annexation, or consolidation with the information form. After a district is dissolved and the statement is filed under this subsection, a person who sells or conveys property within the dissolved district is no longer required to give notice under Section 49.452.

(j) A copy of all information forms, maps, or plats and amendments to these filed under this section shall also be filed with the executive director.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 24, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 248, Sec. 25, eff. June 18, 2003.

Sec. 49.456. BANKRUPTCY OF DISTRICTS; AUTHORITY OF COMMISSION. (a) Notwithstanding Section 140.001, Local Government Code, or any other law of this state, a district created under Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, that is subject to the continuing supervision of the commission may not proceed under Chapter 9 of the Federal Bankruptcy Code (11 U.S.C. Sections 901-946) or any other law enacted by the Congress of the United States under federal bankruptcy authority until the commission authorizes the district to proceed under those laws by written order.

(b) A district requesting the commission's authorization to proceed under Chapter 9 of the Federal Bankruptcy Code (11 U.S.C. Sections 901-946) or any other federal bankruptcy law shall file an application with the commission requesting authorization.

(c) The commission shall investigate the financial condition of a district submitting an application under Subsection (b), including its assets, liabilities, and sources of revenues and may require a district to submit any information that the commission considers material to a determination of whether authorization to proceed in bankruptcy should be granted.

(d) The commission may not authorize a district to proceed in bankruptcy unless the commission determines that the district cannot, through the full exercise of its rights and powers under the laws of this state, reasonably expect to meet its debts and other obligations as they mature.

(e) The commission shall adopt and assess reasonable and necessary fees adequate to recover the costs of the commission in administering this section.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER N. RECREATIONAL FACILITIES

Sec. 49.461. POLICY AND PURPOSE. (a) The legislature finds that:

(1) the provision of parks and recreational facilities is

necessary and desirable for the health and well-being of the people of this state; and

(2) it is the policy of the state and the purpose of this subchapter to encourage persons in districts to provide parks and recreational facilities for their use and benefit.

(b) Repealed by Acts 2003, 78th Leg., ch. 343, Sec. 8.

Added by Acts 2001, 77th Leg., ch. 1423, Sec. 24, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., ch. 343, Sec. 3, 8, eff. Sept. 13, 2003.

Sec. 49.462. DEFINITIONS. In this subchapter:

(1) "Recreational facilities" means parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. The term includes associated street and security lighting. The term does not include a minor improvement or beautification project to land acquired or to be acquired as part of a district's water, sewer, or drainage facilities.

(2) "Develop and maintain" means to acquire, own, develop, construct, improve, manage, maintain, and operate.

Added by Acts 2001, 77th Leg., ch. 1423, Sec. 24, eff. June 17, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 21, eff. September 1, 2013.

Sec. 49.463. AUTHORIZATION OF RECREATIONAL FACILITIES. In addition to the other purposes for which a district is created, a district is created for the purpose of financing, developing, and maintaining recreational facilities for the people in the district. A district may accomplish this purpose as provided in this subchapter.

Added by Acts 2001, 77th Leg., ch. 1423, Sec. 24, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., ch. 343, Sec. 4, eff. Sept. 13, 2003.

Sec. 49.464. ACQUISITION OF AND PAYMENT FOR RECREATIONAL FACILITIES. (a) Except as provided by Section 49.4645, a district may not issue bonds supported by ad valorem taxes to pay for the development and maintenance of recreational facilities.

(b) Except as provided by Subsection (a), a district may acquire recreational facilities and obtain funds to develop and maintain them in the same manner as authorized elsewhere in this code for the acquisition, development, and maintenance of other district facilities. A district may charge fees directly to the users of recreational facilities and to water and wastewater customers of the district to pay for all or part of the cost of their development and maintenance. To enforce payment of an unpaid fee charged under this subsection, the district may:

(1) seek legal restitution of the unpaid fee; and

(2) refuse use of a recreational facility to the person who owes the unpaid fee.

(c) The district may not refuse use of facilities or services other than recreational facilities to enforce an unpaid fee.

(d) A district may issue bonds payable solely from revenues by resolution or order of the board without an election.

Added by Acts 2001, 77th Leg., ch. 1423, Sec. 24, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., ch. 343, Sec. 5, eff. Sept. 13, 2003.

Sec. 49.4641. RECREATIONAL FACILITIES ON SITES ACQUIRED FOR WATER, SEWER, OR DRAINAGE FACILITIES. (a) A district may develop and maintain recreational facilities on a site acquired for the purpose of developing water, sewer, or drainage facilities.

(b) A district is not required to prorate the costs of a site described by Subsection (a) between the primary water, sewer, or drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the intended water, sewer, or drainage purpose.

(c) The engineer may consider the following factors in determining the reasonableness of the size of a water, sewer, or drainage site:

(1) the rules, regulations, and design guidelines or criteria of a municipality, county, or other entity exercising

jurisdiction;

(2) sound engineering principles;

(3) the impact on adjoining property;

(4) the availability of sites that meet the requirements for the proposed use;

(5) requirements for sanitary control;

(6) the need for a buffer zone to mitigate noise or for aesthetic purposes;

(7) benefits to storm water quality; and

(8) anticipated expansions of facilities resulting from:

(A) future growth and demand for district facilities; or

(B) changes in regulatory requirements.

Added by Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 22, eff. September 1, 2013.

Sec. 49.4645. DISTRICT IN CERTAIN COUNTIES: BONDS FOR RECREATIONAL FACILITIES. (a) A district all or part of which is located in Bastrop County, Bexar County, Waller County, Travis County, Williamson County, Harris County, Galveston County, Brazoria County, Montgomery County, or Fort Bend County may issue bonds supported by ad valorem taxes to pay for the development and maintenance of recreational facilities only if the bonds are authorized by a majority vote of the voters of the district voting in an election held for that purpose. The outstanding principal amount of bonds, notes, and other obligations issued to finance parks and recreational facilities supported by ad valorem taxes may not exceed an amount equal to one percent of the value of the taxable property in the district or, if supported by contract taxes under Section 49.108, may not exceed an amount equal to one percent of the value of the taxable property in the districts making payments under the contract as shown by the tax rolls of the central appraisal district at the time of the issuance of the bonds, notes, and other obligations or an amount greater than the estimated cost provided in the park plan under Subsection (b), whichever is smaller. To establish the value of the taxable property in a district under this section, the district may use an estimate of the value provided by the central appraisal district. The district may not issue bonds

supported by ad valorem taxes to pay for the development and maintenance of:

(1) indoor or outdoor swimming pools; or

(2) golf courses.

(b) On or before the 10th day before the first day for early voting by personal appearance at an election held to authorize the issuance of bonds for the development and maintenance of recreational facilities, the board shall file in the district office for review by the public a park plan covering the land, improvements, facilities, and equipment to be purchased or constructed and their estimated cost, together with maps, plats, drawings, and data fully showing and explaining the park plan. The park plan is not part of the proposition to be voted on, does not create a contract with the voters, and may be amended at any time after the election held to authorize the issuance of bonds for the development and maintenance of recreational facilities provided under the plan. The estimated cost stated in the amended park plan may not exceed the amount of bonds authorized at that election.

(c) Notice of a bond election for the development and maintenance of recreational facilities must contain the proposition to be voted on, which must include the estimate of the probable cost of design, construction, purchase, acquisition, and maintenance of improvements and additions and incidental expenses connected with the improvements and the issuance of bonds.

(d) A bond election for the development and maintenance of recreational facilities may be held on the same day as another district election. The board may call a bond election by a separate election order or as part of another election order. The board may submit multiple purposes in a single proposition at an election.

(e) The board may call a bond election for the development and maintenance of recreational facilities as a result of an agreement to annex additional territory into the district.

(f) This section does not apply to a district all or part of which:

(1) is located in Montgomery County; and

(2) includes land within a planned community of at least 15,000 acres of land, of which a majority of the developed acreage is subject to restrictive covenants containing ad valorem assessments.

Added by Acts 2003, 78th Leg., ch. 343, Sec. 6, eff. Sept. 13, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 291 (H.B. 1127), Sec. 1, eff. June 15, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 23, eff. September 1, 2013.

Sec. 49.465. STANDARDS. The board by rule shall establish standards for recreational facilities to be developed and maintained by a district and for the allocation of a district's funds for developing and maintaining recreational facilities in relation to a district's financial requirements for other purposes. To prevent duplication of recreational facilities provided by other governmental entities, rules adopted by the board under this section must require a district, before developing recreational facilities, to make findings that the size and location of the facilities have been established in consideration of municipal or county recreational facilities, whether existing or proposed, that serve or will serve the area in which the district is located.

Added by Acts 2001, 77th Leg., ch. 1423, Sec. 24, eff. June 17, 2001.

Sec. 49.466. COMMISSION RULES. (a) The commission shall adopt rules regarding the provision and financing of recreational facilities funded through the issuance of bonds that are supported by ad valorem taxes.

(b) The commission rules shall:

(1) emphasize the primary goal of financing water, sewer, and drainage facilities to serve the district;

(2) emphasize and encourage the secondary goal of financing recreational facilities; and

(3) encourage the conveyance of land to be used for recreational facilities.

Added by Acts 2003, 78th Leg., ch. 343, Sec. 7, eff. Sept. 13, 2003.

SUBCHAPTER O. EFFECT OF SUBDIVISION OF NONAGRICULTURAL LAND ON WATER RIGHTS

Sec. 49.501. DEFINITION. In this subchapter, "municipal water

supplier" means a municipality, a water supply corporation, or a special utility district converted from a water supply corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.24, eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 880 (H.B. 752), Sec. 1, eff. June 14, 2013.

Sec. 49.502. APPLICABILITY. This subchapter applies only to a district, other than a drainage district, located wholly or partly in a county:

(1) that borders the Gulf of Mexico and the United Mexican States; or

(2) that is adjacent to a county described by Subdivision (1).

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.24, eff. September 1, 2007.

Sec. 49.503. PETITION BY MUNICIPAL WATER SUPPLIER TO CONVERT WATER USE AFTER SUBDIVISION. (a) This section applies only to land:

(1) that is:

(A) subdivided into town lots or blocks or small parcels of the same general nature as town lots or blocks;

(B) designed, intended, or suitable for residential or other nonagricultural purposes, including streets, alleys, parkways, parks, detention or retention ponds, and railroad property and rights-of-way; or

(C) in a subdivision created to meet the requirements of a governmental entity authorized to require a recorded plat of subdivided lands;

(2) that is in a subdivision for which a plat or map has been filed and recorded in the office of the county clerk of each county in which the subdivision is wholly or partly located; and

(3) that is or was assessed as flat rate irrigable property in the municipal water supplier's certificated service area or its corporate area.

(b) A municipal water supplier that serves land described by

Subsection (a) may petition the district in accordance with this section to convert the proportionate irrigation water right to the Rio Grande from irrigation use to municipal use with municipal priority of allocation under commission rules, for the use and benefit of the municipal water supplier.

(c) The municipal water supplier must file the petition with the district not later than January 1 after the expiration of two years after the date the plat or map was recorded under Subsection (a). The district shall consider the petition not later than January 31 of the year following the year in which the petition was filed.

(d) The petition must identify by subdivision name or other sufficient description the land that the municipal water supplier supplies or has the right to supply potable water.

(e) This section applies only to one subdivision of the land recorded under Subsection (a). This section does not apply to any further subdivision of the same property.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.24, eff. September 1, 2007.

Sec. 49.504. EFFECT OF MUNICIPAL WATER SUPPLIER'S FAILURE TO FILE A PETITION. (a) If a municipal water supplier does not file a petition under Section 49.503, the district may retain the water rights for use by the district or may declare the water as excess and contract for the sale or use of the water as determined by the district.

(b) Before a district may contract for the sale or use of water for more than one year with a purchaser located outside of a county described by Section 49.502, the district must, for 90 days:

(1) make the water available under the same terms to all municipal water suppliers located in those counties; and

(2) advertise the offer to sell or contract for the use of the water by posting notice on:

(A) any website of the Rio Grande Watermaster's Office;

(B) any website of the Rio Grande Regional Water Authority; and

(C) the official posting place for the district's board meetings at the district's office.

(c) If, after the 90th day after the last date on which the

district posted notice, a municipal water supplier in a county described by Section 49.502 has not contracted with the district for the sale or use of the water, the district may contract with any other person for the sale or use of the water under the terms of the offer advertised under Subsection (b).

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.24, eff. September 1, 2007.

Sec. 49.505. CALCULATION OF PROPORTIONATE WATER RIGHTS. A district that receives a petition under Section 49.503 shall compute the proportionate amount of water rights to the Rio Grande. The proportionate amount of water rights is equal to the amount of irrigable acres of land in the subdivision multiplied by the lesser of:

(1) 1.25 acre-feet per irrigable acre; or

(2) the sum of all irrigation water rights owned by the district on September 1, 2007, as if the water rights had been converted to municipal use under applicable commission rules, divided by the total amount of irrigable acres of land in the district on September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.24, eff. September 1, 2007.

Sec. 49.506. PROVISION OR CONVERSION OF PROPORTIONATE WATER RIGHTS BY DISTRICT. (a) Not later than the second anniversary of the date the municipal water supplier files a petition under Section 49.503:

(1) a district shall provide the municipal water supplier with the proportionate water rights described by Section 49.505 from the district's existing water rights; or

(2) a district shall, if the district does not have sufficient existing water rights:

(A) apply for appropriate amendments to the district's water rights under commission rules to convert the proportionate water rights from irrigation use to municipal use with municipal priority of allocation; and

(B) provide to the municipal water supplier the

converted rights described by Section 49.505.

(b) The district may continue to use the irrigation use water for district purposes until:

(1) the commission approves the amendment to the district's water rights; or

(2) the water is otherwise provided to the municipal water supplier.

(c) A district that applies for appropriate amendments under Subsection (a)(2) shall provide the municipal water supplier with an estimate of the district's reasonable costs for the administrative proceedings. The district is not required to begin the proceedings until the municipal water supplier deposits the amount of the estimate with the district. The municipal water supplier shall pay the district any reasonable costs that exceed the estimate. The district shall refund the balance of the deposit if the actual cost is less than the estimate.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.24, eff. September 1, 2007.

Sec. 49.507. CONTRACT TO PURCHASE PROPORTIONATE WATER RIGHTS; WATER RIGHTS SALE CONTRACT. (a) A municipal water supplier may contract to purchase the proportionate water rights described by Section 49.505.

(b) The purchase price may not exceed 68 percent of the current market value, as determined under Section 49.509, for the year that the municipal water supplier petitions the district.

(c) The contract must be in writing in a document entitled "Water Rights Sales Contract."

(d) The contract must include the purchase price for the water rights or, if the consideration for the sale is not monetary, the terms of the sale.

(e) The municipal water supplier shall file the contract with the Rio Grande watermaster not later than the 10th day after the date the contract is executed.

(f) The municipal water supplier shall pay the purchase price when the proportionate amount of water rights is made available to the municipal water supplier.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.24,

eff. September 1, 2007.

Sec. 49.508. CONTRACT TO USE PROPORTIONATE WATER RIGHTS; WATER SUPPLY CONTRACT. (a) A municipal water supplier may contract to use water associated with the proportionate water rights described by Section 49.505.

(b) The contract must be for at least 40 years.

(c) The price for the contractual right to use the municipal use water is based on an amount for one acre-foot of municipal use water with a municipal use priority of allocation and may not exceed the sum of:

(1) an amount equal to the district's annual flat rate charge per assessed acre; and

(2) the equivalent of the charge for four irrigations per flat rate acre of irrigable property in the district.

(d) The parties to the contract shall agree on the terms of payment of the contract price.

(e) The board periodically shall determine the flat rate charge and irrigation per acre charge described by Subsection (c).

(f) The contract must be in writing in a document entitled "Water Supply Contract." The contract may contain any terms to which the parties agree.

(g) The municipal water supplier shall file the contract with the Rio Grande watermaster not later than the 10th day after the date the contract is executed.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.24, eff. September 1, 2007.

Sec. 49.509. DUTY OF RIO GRANDE REGIONAL WATER AUTHORITY TO CALCULATE CURRENT MARKET VALUE. (a) Subject to Subsection (d), the Rio Grande Regional Water Authority annually at its January meeting shall calculate the current market value by using the average price per acre-foot of municipal use water after conversion from irrigation use water to municipal use water with a municipal priority of allocation under commission rules of the last three purchases involving:

(1) a municipal water supplier;

(2) a party other than a municipal water supplier; and

(3) at least 100 acre-feet of municipal use water, with municipal priority of allocation.

(b) The Rio Grande Regional Water Authority shall use information from the water rights sales contracts reported to the Rio Grande Watermaster's Office to calculate the current market value.

(c) The Rio Grande Regional Water Authority shall make the calculation:

(1) without charging any of the parties involved; and

(2) using 100 percent of the value of monetary exchanges, not in-kind exchanges.

(d) For purposes of this subsection, "outer boundaries of a district" means a district's boundaries without considering any exclusion of land from inside the district. The Rio Grande Regional Water Authority shall exclude from the calculation of current market value under Subsection (a) any sale between a municipal water supplier and a district if any territory inside the outer boundaries of the district is:

(1) subject to the municipal water supplier's certificate of convenience and necessity; or

(2) in the corporate limits of the municipality served by the municipal water supplier, if the municipal water supplier does not hold a certificate of convenience and necessity.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.24, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 438 (H.B. 2208), Sec. 1, eff. September 1, 2009.

Sec. 49.510. ACCOUNTING FOR SALE OF WATER RIGHTS. A district shall maintain an accounting of money received from the sale of water rights under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.24, eff. September 1, 2007.

Sec. 49.511. CAPITAL IMPROVEMENTS. A district shall designate at least 75 percent of the proceeds from the sale of water rights for

capital improvements in the district.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.24, eff. September 1, 2007.

Sec. 49.512. MAP OF SERVICE AREA. (a) In this section, "outer boundaries of a district" means district boundaries without considering any exclusion of land from inside the district.

(b) Each municipal water supplier that has a certificate of convenience and necessity service area in the outer boundaries of a district shall file a map of the service area with the district.

(c) The municipal water supplier shall update the map and forward the map to the district when changes are made.

(d) A district periodically shall provide to a municipal water supplier that serves territory in the district a copy of the district's map showing the outer boundaries of the district.

(e) A district may request from a municipal water supplier a map of the municipal water supplier's service area, and a municipal water supplier may request from the district a map of the district's outer boundaries. On request, the district and a municipal water supplier shall provide the map free of charge to each other at least one time each year. If the district or municipal water supplier receives more than one request a year for a map, the district or municipal water supplier may charge a reasonable fee for the map.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.24, eff. September 1, 2007.

CHAPTER 50. PROVISIONS GENERALLY APPLICABLE TO DISTRICTS
SUBCHAPTER A. GENERAL PROVISIONS

Without reference to the amendment of Subsecs. (a) and (d), this chapter was repealed by Acts 1995, 74th Leg.,R.S., Ch. 715, Sec. 39, eff. September 1, 1995.

Sec. 50.004. WRITE-IN VOTING IN CERTAIN DISTRICTS. (a) In a general election for board members under this chapter or Chapter 51, 52, 53, 54, 55, or 58 of this code, a write-in vote may not be counted unless the name written in appears on the list of write-in candidates.

(b), (c) Repealed by Acts 1995, 74th Leg., ch. 715, Sec. 39, eff. Sept. 1, 1995.

(d) A declaration of write-in candidacy must be filed not later than 5 p.m. of the 45th day before election day. However, if a candidate whose name is to appear on the ballot dies or is declared ineligible after the 48th day before election day, a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 42nd day before election day.

(e), (f) Repealed by Acts 1995, 74th Leg., ch. 715, Sec. 39, eff. Sept. 1, 1995.

Added by Acts 1993, 73rd Leg., ch. 83, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 667, Sec. 4, eff. Sept. 1, 1995.

SUBCHAPTER D. REPORTS TO EXECUTIVE DIRECTOR

Without reference to the amendment of Subsec. (a), this chapter was repealed by Acts 1995, 74th Leg., R.S., Ch. 715, Sec. 39, eff. September 1, 1995.

Sec. 50.107. AUTHORITY OF COMMISSION OVER ISSUANCE OF DISTRICT BONDS. (a) Notwithstanding any other law to the contrary, a district, other than a navigation district, created under Article XVI, Section 59, of the Texas Constitution, the boundaries of which include less than the total area of one county, may not issue bonds that will be paid wholly or partially by taxes levied by the district unless the commission determines that the project to be financed by the bonds is feasible and issues an order approving the bonds. This section does not apply to refunding bonds.

(b) to (h) Repealed by Acts 1995, 74th Leg., ch. 715, Sec. 39, eff. Sept. 2, 1995.

Added by Acts 1981, 67th Leg., p. 2788, ch. 754, Sec. 1, eff. June 16, 1981. Amended by Acts 1989, 71st Leg., ch. 729, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 81, Sec. 1, eff. May 11, 1995.

CHAPTER 51. WATER CONTROL AND IMPROVEMENT DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51.001. DEFINITIONS. In this chapter:

(1) "District" means a water control and improvement district.

(2) "Board" means the board of directors of a district.

(3) "Director" means a member of the board of directors of a district.

(4) "Commissioners court" means the commissioners court of the county in which a district or part of a district is located.

(5) "Commission" means the Texas Natural Resource Conservation Commission.

(6) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.138, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.075, eff. Aug. 12, 1991.

SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION OF DISTRICT

Sec. 51.011. CREATION OF DISTRICT. A water control and improvement district may be created under and subject to the authority, conditions, and restrictions of either Article III, Section 52, of the Texas Constitution, or Article XVI, Section 59, of the Texas Constitution.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.012. COMPOSITION OF DISTRICT. (a) A district may include all or part of one or more counties, including any town, village, or municipal corporation, and may include any other political subdivision of the state or any defined district.

(b) The areas composing a district do not have to be contiguous but may consist of separate bodies of land separated by land not included in the district; however, each segregated area, before it may be included in the district, must cast a majority vote in favor of the creation of the district.

(c) No district may include territory located in more than one

county except by a majority vote of the electors residing within the territory in each county sought to be included in the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.013. PETITION. (a) A petition requesting creation of a district shall be signed by a majority of the persons who hold title to land in the proposed district which represents a total value of more than 50 percent of the value of all the land in the proposed district as indicated by the tax rolls of the central appraisal district. If there are more than 50 persons holding title to land in the proposed district, the petition is sufficient if signed by 50 of them.

(b) The petition may be signed and filed in two or more copies.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 1423, Sec. 25, eff. June 17, 2001.

Sec. 51.014. CONTENTS OF PETITION. The petition shall include:

(1) the name of the district;

(2) the area and boundaries of the district;

(3) the provision of the Texas Constitution under which the district is to be organized;

(4) the purpose or purposes of the district;

(5) a statement of the general nature of the work to be done and the necessity and feasibility of the project, with reasonable detail and definiteness to assist the court or commission passing on the petition in understanding the purpose, utility, feasibility, and need; and

(6) a statement of the estimated cost of the project based on the information available to the person filing the petition at the time of filing.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.015. PLACE OF FILING; RECORDING. (a) The petition shall be filed in the office of the county clerk of the county in

which the district is located. If land in more than one county is included in the district, copies of the petition certified by the clerk shall be filed in the office of the county clerk of each county in which a portion of the district is located.

(b) The petition shall be recorded in a book kept for that purpose in the office of the county clerk.

(c) If more than one petition is filed and the petitions are identical except for the signature, one copy of the petition shall be recorded and all signatures on the other petitions shall be included.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.016. COMMISSIONERS COURT OR COMMISSION TO CONSIDER CREATION OF DISTRICT. If the land to be included in a district is within one county, the creation of the district shall be considered and ordered by the commissioners court, but if the land to be included in a district is in two or more counties, the creation of the district shall be considered and ordered by the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981.

Sec. 51.017. SINGLE-COUNTY DISTRICT: HEARING. (a) Except as provided in Subchapter H of this chapter, if a petition is filed for the creation of a district within one county, the county judge shall issue an order setting the date of hearing on the petition by the commissioners court and shall endorse the order on the petition or on a paper attached to the petition.

(b) After the order is issued, the county clerk shall issue notice of the hearing.

(c) The petition may be considered at a regular or special session of the court.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.018. SINGLE-COUNTY DISTRICT: NOTICE OF HEARING. (a) The notice of hearing on the petition shall include a statement of

the nature and purpose of the district and the date, time, and place of hearing.

(b) The notice shall be prepared with one original and three copies. The county clerk shall retain one copy of the notice in his files and deliver the original and two copies to the county sheriff.

(c) The sheriff shall post one copy of the notice at the courthouse door 15 days before the day of the hearing and shall publish one copy in a newspaper of general circulation in the county once a week for two consecutive weeks. The first newspaper publication shall be made at least 20 days before the day of hearing.

(d) Before the hearing, the sheriff shall make due return of service of the notice with copy and affidavit of publication attached to the original.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.019. SINGLE-COUNTY DISTRICT: NAME. (a) A district located in one county may be named the _____ County Water Control and Improvement District, Number ____. (Insert the name of the county and proper consecutive number.)

(b) A district may be known and designated by any term descriptive of the location of the district and descriptive of the principal powers to be exercised by the district; however, the word "district" shall be included in the designation and a consecutive number shall be assigned to it if other districts of the same name have been created in the county.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.020. SINGLE-COUNTY DISTRICT: TESTIMONY AT HEARING. (a) At the hearing on the petition, any person whose land is included in or would be affected by the creation of the district may appear and contest the creation of the district and may offer testimony to show that the district:

(1) is or is not necessary;

(2) would or would not be a public utility or benefit to land in the district; and

(3) would or would not be feasible or practicable.

(b) The hearing may be adjourned from day to day.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.021. SINGLE-COUNTY DISTRICT: GRANTING OR REFUSING PETITION. (a) The commissioners court or the commission shall grant the petition requesting the creation of a district if it appears at the hearing that:

(1) organization of the district as requested is feasible and practicable;

(2) the land to be included and the residents of the proposed district will be benefited by the creation of the district;

(3) there is a public necessity or need for the district; and

(4) the creation of the district would further the public welfare.

(b) If the commissioners court or the commission fails to make the findings required by Subsection (a) of this section, it shall refuse to grant the petition.

(c) If the commissioners court or the commission finds that any of the land sought to be included in the proposed district will not be benefited by inclusion in the district, it may exclude those lands not to be benefited and shall redefine the boundaries of the proposed district to include only the land that will receive benefits from the district.

(d) Repealed by Acts 1989, 71st Leg., ch. 936, Sec. 19, eff. Sept. 1, 1989.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1989, 71st Leg., ch. 936, Sec. 19, eff. Sept. 1, 1989.

Sec. 51.022. SINGLE-COUNTY DISTRICT: APPEAL FROM ORDER OF COMMISSIONERS COURT. (a) If the commissioners court grants or refuses to grant the petition, any person who signed the petition or any person who appears and protests the petition and offers testimony against the creation of the district may appeal from the order of the court by giving notice of appeal in open court at the time of the entry of the order, which shall be entered on the court's docket, and by filing with the clerk of the commissioners court within five days

a good and sufficient appeal bond in the amount of $2500.

(b) The appeal bond shall be approved by the clerk of the commissioners court payable to the county judge conditioned for the prosecution of the appeal with effect and the payment of all costs incurred with the appeal in the event that the final decree of the court is against the appellant.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.023. SINGLE-COUNTY DISTRICT: RECORD ON APPEAL; NOTICE OF APPEAL. (a) On completion of an appeal as provided in Section 51.022 of this code, the clerk of the commissioners court shall, within 10 days, prepare a certified transcript of all orders entered by the commissioners court and transmit them with all original documents, processes, and returns on processes to the clerk of the district court to which the appeal is taken.

(b) All persons shall be charged with notice of the appeal without notice or service of notice. No person who failed to appear by petition, in person, or by attorney in the commissioners court may be permitted to intervene in the district court trial.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.024. SINGLE-COUNTY DISTRICT: HEARING IN DISTRICT COURT; PROCEDURE. (a) The district court, either in term time or in vacation time, shall schedule the appeal for hearing with all reasonable dispatch.

(b) In the proceeding in the district court, formal pleadings shall not be required but, with the court's permission, may be filed.

(c) The trial and decision shall be by the court without the intervention of a jury, and the hearing shall be conducted as though the jurisdiction of the district court were original jurisdiction.

(d) The following matters may be contested in the district court:

(1) all matters which were or might have been presented in the commissioners court;

(2) the validity of the act under which the district is proposed to be created; and

(3) the regularity of all previous proceedings.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 2646, ch. 707, Sec. 4(43), eff. Aug. 31, 1981.

Sec. 51.025. SINGLE-COUNTY DISTRICT: JUDGMENT OF DISTRICT COURT; APPEAL. (a) In the appeal, the district court shall apply to the determination its full powers to the end that substantial justice may be done.

(b) An appeal from the judgment of the district court may be taken as in other civil causes, but appeals filed under Section 51.022 of this code shall be given precedence on the docket of any higher court over all causes which are not of similar public concern.

(c) The final judgment of the district court, or other court to which an appeal may be prosecuted, shall be certified and transmitted to the clerk of the commissioners court with all original documents and processes which were transmitted from the commissioners court to the district court on appeal.

(d) The commissioners court shall enter its order on the petition to conform to the decree entered by the court of final jurisdiction and shall enter other and further orders as may be required by law to execute the intent of the certified decree.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.026. SINGLE-COUNTY DISTRICT: APPOINTMENT OF DIRECTORS; BOND. (a) If the commissioners court grants a petition for creation of a district, it shall appoint five directors who shall serve until their successors are elected or appointed in accordance with law.

(b) Each director shall, within 15 days after appointment, file his official bond in the office of the county clerk, and the county clerk shall present the bond to the county judge for approval. The county judge shall pass on the bond and approve it, if it is proper and sufficient, or disapprove it and shall endorse his action on the bond and return it to the county clerk.

(c) If approved, the bond of a director shall be recorded in a record kept for that purpose in the office of the county clerk, but if a bond is not approved, a new bond may be furnished within 10 days after disapproval.

(d) If any director appointed under this section fails to qualify, the commissioners court shall appoint another person to replace him.

(e) Each director appointed under this section shall take the oath of office as provided by Section 51.078 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.027. MULTI-COUNTY DISTRICT: HEARING BY COMMISSION. (a) The commission shall have exclusive jurisdiction and power to hear and determine all petitions for creation of a district which will include land or property located in two or more counties.

(b) The orders of the commission concerning the organization of a district shall be final, unless an appeal is taken from the orders as provided in this subchapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.028. MULTI-COUNTY DISTRICT: NOTICE OF HEARING. (a) When a petition is filed, the commission shall give notice of an application in the manner provided in Section 49.011 and may conduct a hearing on the application if the commission determines that a hearing is necessary under that section.

(b) Further, the notice shall be posted at the courthouse door, on the bulletin board used for posting legal notices, in each county in which the district may be located.

(c) The notice shall be published in one or more newspapers with general circulation in the area of the proposed district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 25, eff. Sept. 1, 1997.

Sec. 51.031. MULTI-COUNTY DISTRICT: APPEAL FROM COMMISSION DECISION. (a) When the commission grants or refuses a petition, any person who comes within the requirements specified in Sections 51.020-51.025 of this code may prosecute an appeal from the judgment of the commission under Sections 51.022-51.025 of this code.

(b) The appeal may be taken to any district court in any county in which part of the proposed district is located or to a district court in Travis County.

(c) The time within which an appeal bond may be approved and filed is 15 days after the entry of the final order by the commission.

(d) On the perfection of the appeal, the appellant shall pay the actual cost of the transcript of the record, which will be assessed as part of the costs incurred on the appeal.

(e) Whenever practicable, the original documents and processes with the returns attached shall be sent to the district court.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.032. MULTI-COUNTY DISTRICT: APPOINTMENT OF DIRECTORS BY COMMISSION; BOND. (a) If the commission grants the petition for creation of the district, it shall appoint five directors, who shall serve until their successors are elected or appointed.

(b) A certified copy of the order of the commission granting a petition and naming the directors shall be filed in the office of the county clerk of each county in which a portion of the district is located.

(c) Each director named in the order shall, within 15 days after appointment, file his official bond in the office of the county clerk of the county of his residence. The county clerk shall present the bond to the county judge for approval.

(d) The county judge shall act on each bond in the manner provided in Section 51.026 of this code.

(e) If any director appointed under this section fails to qualify, the commissioners court of the county in which he lives shall appoint some qualified person to replace him.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.035. INCLUSION OF CITY, TOWN, OR MUNICIPAL CORPORATION IN DISTRICT. (a) No city, town, or municipal corporation may be included within any district created under this chapter unless the proposition for the creation of the district has been adopted by a majority of the electors in the city, town, or municipal corporation.

(b) Any municipal corporation included within a district shall be a separate voting district, and the ballots cast within the municipal corporation shall be counted and canvassed separately from the remainder of the district.

(c) No district which includes a city, town, or municipal corporation may include land outside of the municipal corporation unless the election to confirm and ratify the creation of the district favors the creation of the district independent of the vote within the municipal corporation.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.036. CONFIRMATION ELECTION IN DISTRICT INCLUDING LAND IN MORE THAN ONE COUNTY. No district, the major portion of which is located in one county, may be organized to include land in another county unless the election held in the other county to confirm and ratify the creation of the district is adopted by those voting in the other county.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.037. EXCLUSION OF PARTS OF DISTRICT; DISSOLUTION. (a) If any portion of a district governed by Sections 51.035 and 51.036 of this code, votes against the creation of the district and the remainder of the district votes for the creation, the district is confirmed and ratified in those portions of the district voting for the creation, and the district is composed only of those portions.

(b) The excluded portions of the district shall be excluded from all debts and obligations incurred after the election; however, all land and property included in the original district shall be subject to the payment of taxes for the payment of all debts and obligations, including organization expenses, incurred while it was a part of the district.

(c) If a district is created and portions of the proposed district are excluded by the vote in those portions, 10 percent of the voters in the district may file with the board a petition asking for a new election on the issue. A new election shall be ordered and held for the remaining portion of the district or the district organization may be dissolved by order of the board and a new

district formed.

(d) A petition requesting a new election shall be filed within 30 days after the day on which the result of the election is canvassed and declared by the board.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.038. MUNICIPAL DISTRICTS. (a) A district operating under the provisions of this chapter may, by order of the board entered in the minutes, become a "municipal district."

(b) To become a municipal district, a district shall have a taxing power unlimited as to rate and amount and may not have outstanding or authorized bond obligations exceeding 20 percent of the established assessable, taxable evaluation of the real estate subject to the district's taxing power. In computing outstanding or authorized bond obligations, the bond obligations which may be retired by the district out of revenues from sources other than the income from district taxation shall not be included.

(c) To be eligible to become a municipal district, a district:

(1) shall embrace the total area of a municipal corporation which has bond obligations which may be declared eligible for purchase by savings banks and trusts under the acts of the State of New York, and which has plans designed for furnishing, in whole or in part, a water supply, sanitation facilities, flood protection, or other service inuring to the general benefit of the inhabitants of the embraced city; or

(2) shall have a population, according to the last preceding federal census, of at least 30,000 persons and have established assessable real estate values of at least $50 million.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.039. BONDS OF MUNICIPAL DISTRICTS. (a) A district operating under Section 51.038 of this code may issue bonds which bear the legend "municipal bond."

(b) Bonds issued in compliance with this section and with Section 51.038 of this code shall be eligible for investment of the funds of:

(1) state banks, trust funds, and savings banks;

(2) insurance companies, for the purpose of holding the bonds as legal reserves against liability under their contracts for insurance or for investment of an accumulated surplus;

(3) counties, cities, towns, and other political bodies, for the purpose of investing the accumulated sinking fund money of those bodies;

(4) the State Board of Education and the regents of The University of Texas System; and

(5) trustees, receivers, administrators, and guardians administering funds under orders of a court.

(c) Municipal bonds issued under this section, when in the lawful possession of any person, shall be lawful reserves, where reserves are required by law.

(d) The bonds are eligible for deposit with the banking and insurance departments of Texas in all cases where deposit, pledge, or security is required by law.

(e) The bonds shall be lawful security for any bank designated as an official depository for a political body under the laws of Texas.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.040. CONVERSION OF CERTAIN DISTRICTS INTO DISTRICTS OPERATING UNDER THIS CHAPTER. (a) Any water improvement district, levee improvement district, or irrigation district created under Article III, Section 52, of the Texas Constitution, or under Article XVI, Section 59, of the Texas Constitution, or any conservation and reclamation district created under Article XVI, Section 59, of the Texas Constitution, may be converted to a district operating under this chapter.

(b) The governing body of a district which desires to convert into a district operating under this chapter shall adopt and enter in the minutes of the governing body a resolution declaring that, in its judgment, conversion into a water control and improvement district operating under this chapter and under Article XVI, Section 59, of the Texas Constitution, would serve the best interest of the district and would be a benefit to the land and property included in the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.041. CONVERSION OF DISTRICT; NOTICE. (a) Notice of the adoption of a resolution under Section 51.040 of this code shall be given by publishing the resolution in a newspaper with general circulation in the county or counties in which the district is located.

(b) The notice shall be published once a week for two consecutive weeks with the first publication not less than 14 full days before the time set for a hearing.

(c) The notice shall:

(1) state the time and place of the hearing;

(2) set out the resolution in full; and

(3) notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.042. CONVERSION OF DISTRICT; FINDINGS. (a) If, on a hearing, the governing body of the district finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, it shall enter an order making this finding and the district shall become a district operating under this chapter.

(b) If the governing body finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, it shall enter an order against conversion of the district into one operating under this chapter.

(c) The findings of the governing body of a district entered under this section are final and not subject to appeal or review.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.043. EFFECT OF CONVERSION. A district which converts into a district operating under this chapter shall:

(1) be constituted a water control and improvement district operating under and governed by this chapter;

(2) be a conservation and reclamation district under the provisions of Article XVI, Section 59, of the Texas Constitution; and

(3) have and may exercise all the powers, authority, functions, and privileges provided in this chapter in the same manner and to the same extent as if the district had been created under this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.044. RESERVATION OF CERTAIN POWERS FOR CONVERTED DISTRICTS. (a) Any water improvement district, water control and preservation district, fresh water supply district, levee improvement district, drainage district, or navigation district, after conversion under Section 51.040 of this code, may continue to exercise all necessary specific powers under any specific conditions provided by the chapter of this code under which the district was operating before conversion.

(b) At the time of making the order of conversion, the governing body shall specify in the order the specific provisions of the chapter of the code under which the district had been operating which are to be preserved and made applicable to the operations of the district after conversion into a district operating under this chapter.

(c) A reservation of a former power under Subsection (a) of this section may be made only if this chapter does not make specific provision concerning a matter necessary to the effectual operation of the converted district.

(d) In all cases in which this chapter does make specific provision, this chapter shall, after conversion, control the operations and procedure of the converted district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.045. CONVERSION OF A DISTRICT OPERATING UNDER THIS CHAPTER TO A FRESH WATER SUPPLY DISTRICT. (a) Any district operating under this chapter may be converted into a district operating as a fresh water supply district under Chapter 53 of this code in the manner provided in this section.

(b) The governing body of a district desiring to convert under this section shall adopt a resolution declaring that, in its judgment, conversion of the district into one operating under Chapter 53 of this code and under the provisions of Article XVI, Section 59, of the Texas Constitution, would be in the best interest of the district and would be a benefit to the land and property in the district.

(c) The resolution shall provide for a public hearing on the proposition at a date to be fixed by the governing body not less than 15 days nor more than 30 days from the date of the resolution.

(d) Notice of the hearing shall be published once a week for two consecutive weeks in a newspaper with general circulation in the area in which the district is located. The first publication shall be not less than 14 days before the time set for the hearing. The notice shall contain a copy of the resolution or a substantial statement of the matters contained in the resolution.

(e) At the hearing, any person may appear and offer testimony and other evidence.

(f) If, on hearing, the board finds that the conversion of the district operating under this chapter into one operating under Chapter 53 of this code would be in the best interest of the district and would be a benefit to the land and property in the district, it shall enter an order declaring the district to be one operating under Chapter 53 of this code, and thereafter, the district shall operate under the provisions of Chapter 53.

(g) If the board finds that conversion would not be in the best interest of the district and would not be a benefit to the land and property in the district, it shall enter its order to that effect and the district shall continue to operate under this chapter.

(h) The findings of the governing body shall be final and not subject to review or appeal.

(i) Nothing in this section may be construed to authorize the impairment of any existing contract.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.046. ORGANIZATION OF DISTRICT TO CONDUCT PRELIMINARY SURVEYS. A district may be organized for the sole purpose of conducting preliminary surveys to determine whether or not

improvements are needed and what improvements, if any, are required to promote the public welfare.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.047. CREATION OF MASTER DISTRICT. A master district may be created under this chapter and may include all or any part of the area of one or more districts created and operating under the provisions of this chapter or Chapters 53, 55, 56, 57, 60-63 of this code or Chapter 3, Title 128, Revised Civil Statutes of Texas, 1925.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.048. PURPOSES OF MASTER DISTRICT. (a) A master district may be created to conduct preliminary surveys and to develop a plan for the control and use of the water of any given stream, so that the improvements on one part of a watershed will be mechanically and economically related to all other improvements on the stream or its watershed.

(b) A master district also may be created to enable districts to pool their resources when necessary to economically:

(1) make preliminary surveys;

(2) adopt a plan to coordinate the plants, improvements, and facilities of the several constituent districts;

(3) provide the improvements and facilities proposed to be constructed and furnished by the master district;

(4) provide improvements for the common benefit of the several districts;

(5) enable the districts jointly to make purchases; or

(6) maintain or operate works for the common benefit of the several districts.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.049. MASTER DISTRICT; PROCEDURE. (a) The Commission shall have exclusive jurisdiction to hear and determine petitions for the creation of a master district.

(b) Each district composing part of a master district shall,

for all purposes of an election, constitute a separate voting unit. No existing district may be included in a master district unless the proposal is approved by a majority of the qualified electors of the constituent district voting in the election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.050. MASTER DISTRICT; DIRECTORS. A master district may have directors which number five, seven, or any other uneven number up to 21.

(b) The number shall be determined at the time of the creation of the district and may thereafter be changed by the directors of the district in a manner to conform to the requirements for equitable representation for the various areas of the master district.

(c) The election and qualification of the directors shall, where applicable, be controlled as provided by the other provisions of this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.051. MASTER DISTRICT GOVERNED BY CHAPTER. The provisions of this chapter, where applicable, shall govern a master district in:

(1) the procedure for its creation;

(2) the conduct of its affairs; and

(3) its powers.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.052. CITY, TOWN, OR MUNICIPAL CORPORATION CREATED AS A DISTRICT. (a) Any city, town, or municipal corporation may have the benefit and powers provided in this chapter under the Texas Constitution and may aid any district in the construction and operation of any improvements to the extent that the improvements may be an advantage to the municipal corporation.

(b) The area included in any city, town, or municipal corporation may be organized into and constituted a district operating under this chapter with all the powers, authority, and

privileges provided by Article XVI, Section 59, of the Texas Constitution. The district shall be governed by this chapter and by an ordinance duly enacted by the governing body of the city, town, or municipal corporation.

(c) The ordinance required by Subsection (b) of this section shall appoint five directors for the district. Each director's bond shall be filed with and approved by the governing body of the municipal corporation.

(d) On the qualification of the directors, the district shall be completely organized without the necessity of an election. The district shall thereafter be governed by the provisions of this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 51.071. BOARD OF DIRECTORS. The governing body of a district is the board of directors, which shall consist of five directors.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.0711. SPECIAL DIRECTOR. (a) The governing body of a municipality that enters a contract or agreement with a district located in more than one county to jointly construct, acquire, operate, or maintain a regional wastewater system is entitled to appoint a special director to the board of the district. Section 51.072 does not apply to a special director.

(b) The office of special director exists only during the period for which the contract or agreement is in effect. If the contract or agreement is in effect for a term of more than four years, a special director serves for a four-year term of office. A vacancy in the office of special director shall be filled by the governing board of the municipality.

(c) A special director is entitled to vote only on matters before the district's board of directors that are directly related to the regional wastewater system that is the subject of the contract or agreement between the municipality and the district.

(d) In any matter on which the director appointed under this

section votes, approval by a majority of the six members of the board is required for approval.

Added by Acts 1989, 71st Leg., ch. 575, Sec. 1, eff. June 14, 1989. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 4, eff. Sept. 1, 1995.

Sec. 51.072. QUALIFICATIONS FOR DIRECTOR. (a) To be qualified for election as a director, a person must:

(1) be a resident of the state;

(2) own land subject to taxation in the district or be a qualified voter in the district; and

(3) be at least 18 years of age.

(b) Section 49.052 does not apply to a district governed by this chapter whose principal purpose is providing water for irrigation.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 5, eff. Sept. 1, 1995. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 24, eff. September 1, 2013.

Sec. 51.0731. ELECTION DATE FOR CERTAIN DIRECTORS. The election date for directors of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district shall be the first Saturday in April.

Added by Acts 1973, 63rd Leg., p. 1539, ch. 559, Sec. 2, eff. June 15, 1973. Amended by Acts 1975, 64th Leg., p. 625, ch. 256, Sec. 1, eff. Sept. 1, 1975.

Sec. 51.0732. UNIFORM ELECTION DATE. Notwithstanding the election date prescribed by Section 51.0731 of this code, an election held under that section shall be held on a uniform election date as provided by law.

Added by Acts 1987, 70th Leg., ch. 54, Sec. 25(l), eff. Sept. 1,

1987.

Sec. 51.075. APPLICATION TO GET ON BALLOT. A candidate for the office of director or other elective office may file an application with the secretary of the board to have the candidate's name printed on the election ballot. The application must be signed by the applicant or by at least 10 qualified electors of the district and must be filed not later than 5 p.m. of the 45th day before the date of the election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1989, 71st Leg., ch. 1009, Sec. 1, eff. Sept. 1, 1989.

Sec. 51.076. SELECTION OF DIRECTORS IN CERTAIN DISTRICTS. (a) In a district created after June 18, 1967, with boundaries coterminous with the boundaries of a county, the commissioners court may provide in the order granting the petition for creation that the directors are to be selected either as provided in Section 49.102 or by the "commissioners precinct method," which provides for the election of two directors from each commissioners precinct in the county and the election of one director from the county at large.

(b) If the commissioners court provides for the commissioners precinct method, it may appoint two qualified directors from each commissioners precinct and one director from the county at large, who shall serve until their successors are elected and have qualified. Except for the provisions of this subsection, Section 51.026 of this code applies to the appointment of the initial directors.

(c) The directors appointed by the commissioners court under Subsection (b) of this section shall order an election in the district on the second Tuesday in January following the creation of the district. The two persons receiving the highest number of votes in each precinct are the directors from that precinct, and the person receiving the highest number of votes from the county at large is the director at large.

(d) Of the two persons elected from each commissioners precinct, the person who receives the highest number of votes in each precinct shall serve for four years and until his successor is

elected and has qualified, and the person receiving the second highest number of votes in each precinct shall serve for two years and until his successor is elected and has qualified. The person who is elected from the county at large shall serve for four years and until his successor is elected and has qualified. At each election after the first election, a person who is elected director shall serve for four years and until his successor is elected and has qualified.

(e) To be qualified for election as a director from a commissioners precinct, a person must be 21 years of age, a citizen of the state, and own land subject to taxation in the commissioners precinct from which he is elected.

(f) To be qualified for election as a director from the county at large, a person must possess the qualifications specified in Section 51.072 of this code.

(g) If a vacancy occurs in the office of director between regular elections, the vacancy shall be filled for the unexpired term at a special election in the director's precinct. The special election shall be called by a majority of the remaining members of the board within 8 days after the vacancy occurs and to be held not more than 40 days after the vacancy occurs.

(h) Except as otherwise provided in this section, all laws relating to the election and qualification of directors of a district shall govern and control the election and qualification of directors selected by the commissioners precinct method whether the precinct election is regular or special.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1983, 68th Leg., p. 5212, ch. 951, Sec. 3, eff. Jan. 1, 1984; Acts 1995, 74th Leg., ch. 715, Sec. 6, eff. Sept. 1, 1995.

Sec. 51.085. DISTRICT TAX ASSESSOR AND COLLECTOR. The board may appoint one person to the office of tax assessor and collector, or it may order an election to fill that office.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.090. BONDS OF OFFICERS OF A DISTRICT ACTING AS FISCAL AGENT OR COLLECTING MONEY FOR UNITED STATES. (a) If a district is

appointed fiscal agent for the United States or if a district is authorized to make collections of money for the United States in connection with a federal reclamation project, each director and officer of the district including the tax assessor and collector shall execute an additional bond in the amount required by the secretary of the interior, conditioned on the faithful discharge of his respective office and on the faithful discharge by the district of its duties as fiscal or other agent of the United States under its appointment or authorization.

(b) The additional bonds shall be approved, recorded, and filed as provided in this chapter for other official bonds.

(c) Suit may be brought on the bonds by the United States or any person injured by the failure of the officer or the district to fully, promptly, and completely perform their respective duties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

For expiration of this section, see Subsection (e).

Sec. 51.091. PROJECTS OF CERTAIN DISTRICTS. (a) In this section, "preservation district" means a district defined by Chapter 54 and created by special law with the power to promote the preservation of fish and other wildlife within its boundaries.

(b) A water supply project financed, in whole or in part, with water development bonds, as defined under Section 16.001, that is undertaken by a district having operations or facilities located in not less than four counties, and that is included in a regional water plan under Section 16.053, is of fundamental and paramount importance and is to be given priority over the activities, rules, regulations, ordinances, or any requirement for a permit, bond, or fee of a preservation district, which shall be inapplicable to the construction of the project.

(c) Governmental immunity of a preservation district is waived in an action brought by a district described in Subsection (b) for the acquisition of land, easements, or other property for a project described in Subsection (b), if the preservation district is the owner of the land or property.

(d) Notwithstanding any other law, venue shall lie in Travis County for an action described in Subsection (c) and brought by a district described in Subsection (b).

(e) This section expires September 1, 2039.

Added by Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 1, eff. September 1, 2013.

Sec. 51.0951. MEETINGS IN CERTAIN DISTRICTS. After at least 25 qualified electors are residing in a district covered by Section 51.0941 of this code, on written request of at least five of these electors, the board shall designate a meeting place within the district. On the failure to designate the location of the meeting place within the district, five electors may petition the commission to designate a location, which may be changed by the board after the next election of members to the board.

Added by Acts 1973, 63rd Leg., p. 618, ch. 263, Sec. 2, eff. Aug. 27, 1973.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 51.121. PURPOSES OF DISTRICT. (a) A water control and improvement district organized under the provisions of Article III, Section 52, of the Texas Constitution, may provide for:

(1) the improvement of rivers, creeks, and streams to prevent overflows, to permit navigation or irrigation, or to aid in these purposes; or

(2) the construction and maintenance of pools, lakes, reservoirs, dams, canals, and waterways for irrigation, drainage, or navigation, or to aid these purposes.

(b) A water control and improvement district organized under the provisions of Article XVI, Section 59, of the Texas Constitution, may provide for:

(1) the control, storage, preservation, and distribution of its water and floodwater and the water of its rivers and streams for irrigation, power, and all other useful purposes;

(2) the reclamation and irrigation of its arid, semiarid, and other land which needs irrigation;

(3) the reclamation, drainage, conservation, and development of its forests, water, and hydroelectric power;

(4) the navigation of its coastal and inland water;

(5) the control, abatement, and change of any shortage or

harmful excess of water;

(6) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and

(7) the preservation and conservation of all natural resources of the state.

(c) The purposes stated in Subsection (b) of this section may be accomplished by any practical means.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.122. ADOPTING RULES AND REGULATIONS. A district may adopt and enforce reasonable rules and regulations to:

(1) secure and maintain safe, sanitary, and adequate plumbing installations, connections, and appurtenances as subsidiary parts of the district's sanitary sewer system;

(2) preserve the sanitary condition of all water controlled by the district;

(3) prevent waste or the unauthorized use of water controlled by the district;

(4) regulate privileges on any land or any easement owned or controlled by the district; or

(5) provide and regulate a safe and adequate freshwater distribution system.

Added by Acts 2001, 77th Leg., ch. 1423, Sec. 26, eff. June 17, 2001.

Sec. 51.125. CONSTRUCTION OF IMPROVEMENTS. A district may construct all works and improvements necessary:

(1) for the prevention of floods;

(2) for the irrigation of land in the district;

(3) for the drainage of land in the district, including drainage ditches or other facilities for drainage;

(4) for the construction of levees to protect the land in the district from overflow;

(5) to alter land elevations where correction is needed; and

(6) to supply water for municipal uses, domestic uses, power and commercial purposes, and all other beneficial uses or controls.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.127. ADOPTING RULES AND REGULATIONS. A district may adopt and make known reasonable regulations to:

(1) secure and maintain safe, sanitary, and adequate plumbing installations, connections, and appurtenances as subsidiary parts of sanitary sewer systems;

(2) preserve the sanitary condition of all water controlled by the district;

(3) prevent waste or the unauthorized use of water; and

(4) regulate residence, hunting, fishing, boating, and camping, and all recreational and business privileges on any body or stream of water, or any body of land, or any easement owned or controlled by the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.128. EFFECT OF RULES AND REGULATIONS. After the required publication, rules and regulations adopted by the district under Section 51.127 of this code shall be recognized by the courts as if they were penal ordinances of a city.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.129. PUBLICATION OF RULES AND REGULATIONS. (a) The board shall publish once a week for two consecutive weeks a substantive statement of the rules or regulations and the penalty for their violation in one or more newspapers with general circulation in the area in which the property of the district is located.

(b) The substantive statement shall be as condensed as is possible to intelligently explain the purpose to be accomplished or the act forbidden by the rule or regulation.

(c) The notice must advise that breach of the regulations will subject the violator to a penalty and that the full text of the regulation is on file in the principal office of the district where it may be read by any interested person.

(d) Any number of regulations may be included in one notice.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.130. EFFECTIVE DATE OF RULES AND REGULATIONS. The penalty for violation of a rule or regulation is not effective and enforceable until five days after the publication of the notice. Five days after the publication, the published regulation shall be in effect and ignorance of it is not a defense for a prosecution for the enforcement of the penalty.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.133. CONSTRUCTING BRIDGES AND CULVERTS ACROSS AND OVER COUNTY AND PUBLIC ROADS. The district shall build necessary bridges and culverts across and over district canals, laterals, and ditches which cross county or public roads. Funds of the district shall be used to construct the bridges and culverts.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.134. CONSTRUCTING CULVERTS AND BRIDGES ACROSS AND UNDER RAILROAD TRACKS, ROADWAYS, AND INTERURBAN OR STREET RAILWAYS. (a) The district, at its own expense, may build necessary bridges and culverts across or under any railroad tracks or roadways of any railroad or any interurban, or street railway to enable the district to construct and maintain any canal, lateral, ditch, or other improvement of the district.

(b) Before the district builds a bridge or culvert, the board shall deliver written notice to the local agent, superintendent, roadmaster, or owner. The railroad company or its owner shall have 60 days in which to build the bridge at its own expense and according to its own plans.

(c) The canal, culvert, ditch, or structure shall be constructed of sufficient size and proper plan to serve the purpose for which it is intended.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.135. CONTRACTING FOR TOLL BRIDGES AND FERRY SERVICE. (a) A district may make contracts with responsible persons for the construction and operation of toll bridges over the district's water for not more than 20 years or for ferry service on or over the district's water for not more than 10 years.

(b) The contract shall set reasonable compensation to be charged for service by the facility and shall require adequate bond or bonds from the person with whom it enters into the contract, payable to the district, on the conditions and in the amount which the board considers necessary.

(c) The contracts may provide for forfeiture of the franchise for a failure of the licensee to render adequate public service.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.149. CONTRACTS. (a) Notwithstanding Section 49.108(e), no approval other than that specified in Subsection (c) need be obtained in order for a contract between a district and a municipality to be valid, binding, and enforceable against all parties to the contract. After approval by a majority of the electors voting at an election conducted in the manner of a bond election, a district may make payments under a contract from taxes for debt that does not exceed 30 years.

(b) A contract may provide that the district will make payments under the contract from proceeds from the sale of notes or bonds, from taxes, from any other income of the district, or from any combination of these.

(c) A district may make payments under a contract from taxes, other than maintenance taxes, after the provisions of the contract have been approved by a majority of the electors voting at an election held for that purpose.

(d) Any contract election may be held at the same time as and in conjunction with an election to issue bonds, and the procedure for calling the election, giving notice, conducting the election, and canvassing the returns shall be the same as the procedure for a bond election.

(e) A district created pursuant to Chapter 628, Acts of the 68th Legislature, Regular Session, 1983, is defined as a municipal corporation and political subdivision pursuant to Chapter 405, Acts

of the 76th Legislature, Regular Session, 1999, and is authorized to take action accordingly.

Amended by Acts 1989, 71st Leg., ch. 328, Sec. 13, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 778, Sec. 1, eff. June 16, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 20.02, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 966, Sec. 2.58, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 18.010, eff. Sept. 1, 2003.

Sec. 51.150. CONTRACTS WITH OTHER DISTRICTS OR WATER SUPPLY CORPORATIONS. (a) In this section, "authorized water district" means a district created under Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution.

(b) A district may enter into a contract with an authorized water district or a water supply corporation that authorizes the district to acquire, through the issuance of debt or other means, and convey to the authorized water district or water supply corporation all or part of a water supply, treatment, or distribution system, a sanitary sewage collection or treatment system, or works or improvements necessary for drainage of land in the district. The contract may:

(1) permit the district to rehabilitate, repair, maintain, improve, enlarge, or extend any existing facilities to be conveyed to the authorized water district or water supply corporation; or

(2) require the district to pay impact fees or other fees to the authorized water district or water supply corporation for capacity or service in facilities of the authorized water district or water supply corporation.

(c) The contract entered into under Subsection (b) may authorize the authorized water district or water supply corporation to purchase the water, sewer, or drainage system from the district through periodic payments to the district in amounts that, combined with the net income of the district, are sufficient for the district to pay the principal of and interest on any bonds of the district. The contract may provide that the payments due under this subsection:

(1) are payable from and secured by a pledge of all or part of the revenues of the water, sewer, or drainage system;

(2) are payable from taxes to be imposed by the authorized water district; or

(3) are payable from a combination of the revenues and taxes described by Subdivisions (1) and (2).

(d) The contract may authorize the authorized water district or water supply corporation to operate the water, sewer, or drainage system conveyed by the district under Subsection (b).

(e) The contract may require the district to make available to the authorized water district or water supply corporation all or part of the raw or treated water to be used for the provision of services within the district.

(f) If the contract provides for the water, sewer, or drainage system to be conveyed to the authorized water district or water supply corporation on or after the completion of construction, the authorized water district or water supply corporation may pay the district to provide water, sewer, or drainage services to residents of the authorized water district or customers of the water supply corporation.

(g) The contract may authorize the district to convey to the authorized water district or water supply corporation at no cost a water, sewer, or drainage system and require the authorized water district or water supply corporation to use all or part of those systems to provide retail service to customers within the district in accordance with the laws of this state and any certificate of convenience and necessity of the authorized water district or water supply corporation.

(h) A contract under this section must be approved by a majority vote of the governing bodies of the district and the authorized water district or water supply corporation. If Section 52, Article III, or Section 59, Article XVI, Texas Constitution, requires that qualified voters of the district approve the imposition of a tax by the district or the authorized water district, the district or the authorized water district shall call an election for that purpose.

Added by Acts 2005, 79th Leg., Ch. 962 (H.B. 1644), Sec. 1, eff. June 18, 2005.

Sec. 51.156. CONTRACT WITH THE UNITED STATES. (a) The board of a district organized under the provisions of Article XVI, Section 59, of the Texas Constitution to irrigate arid land may contract with

the United States for the investigation, construction, extension, operation, and maintenance of any federal reclamation project of benefit to the district and authorized under the National Reclamation Act of 1902, as amended.

(b) The board may contract to secure a district water supply from the federal reclamation project and to pay to the United States the agreed cost of it in the form of construction charges, operation and maintenance charges, and water rental charges, as shown by the contract and in accordance with the terms and conditions of the national reclamation law.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.157. CONSTRUCTION CHARGES UNDER A CONTRACT WITH THE UNITED STATES. The construction charges under a contract with the United States may include the cost of drainage and flood-control works necessary to control floods or to maintain the irrigability of district land, and the cost of incidental electric power and municipal water service which the water supply of the reclamation project makes feasible.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.158. ELECTION TO APPROVE A CONTRACT WITH THE UNITED STATES. (a) The electors of the district shall vote to approve every contract involving the payment of construction charges to the United States. The provisions of this chapter relating to the election to approve the validation of district bonds shall be followed, including the prosecution of an action in court to determine the validity of the contract.

(b) The notice of election shall state the maximum amount, exclusive of operation and maintenance charges, water rental charges, interest, and penalties, payable by the district to the United States under the contract.

(c) The ballot shall be printed to provide for voting for or against the proposition: "The contract with the United States and levy of taxes to make payments under the contract." This is the only proposition which may appear on the ballot.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.159. CONVEYING PROPERTY TO THE UNITED STATES. A district may convey any property to the United States necessary for the construction, operation, or maintenance of federal reclamation works used or to be used for the benefit of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.160. ENGINEERING DATA UNNECESSARY. If a district contracts with the United States under the provisions of Section 51.155 of this code for use by the district of federal reclamation works, the district need not prepare or file any engineering data for the construction of the works.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.161. CONSENT OF UNITED STATES TO ALTER DISTRICT'S BOUNDARIES. Until all money has been paid by the district which is due to the United States under a contract relating to a federal reclamation project, the United States must consent to any change in the boundaries of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.162. TAXES LEVIED BY DISTRICT UNDER CONTRACT WITH THE UNITED STATES. (a) A district which enters into a contract with the United States shall levy annually sufficient taxes to provide payment of all installments required by the contract.

(b) The board may apportion benefits and levy and collect taxes on the benefit basis instead of the ad valorem basis with the approval of the district electors.

(c) The board may pay construction charges when provided by contract on the basis of the average gross annual acre income of the land of the district or designated divisions or subdivisions of the district. The secretary of the interior shall determine the annual gross acre income.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.163. ASSESSMENTS FOR CONTRACTS WITH THE UNITED STATES. The board shall levy annually sufficient assessments to collect the money required to pay all the district's obligations in full when due regardless of any delinquency in payment of assessments by any tract of land. If collections in any year are insufficient to pay the obligations of the district, the levy shall be increased sufficiently the following year to cover the deficit.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.164. DURATION OF ANNUAL LEVIES FOR CONTRACTS WITH THE UNITED STATES. The board shall continue annual levies for payment of construction charges each year against each tract of land in the district even though construction charges apportioned against other tracts of land in the district may be paid sooner or later.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.165. SUPERIORITY OF LIEN TO SECURE CONTRACT WITH THE UNITED STATES. The lien against district land created by a contract with the United States shall be superior to the lien created by any district bonds approved subsequent to the date of the contract with the United States.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.166. DISTRICT'S AUTHORITY TO SOLICIT COOPERATION, DONATIONS AND CONTRIBUTIONS FROM OTHER AGENCIES. A district organized under the provisions of this chapter may solicit cooperation, donations, and contributions from the United States, the state, or any other state or nation; any county, municipality, water improvement district, water control and improvement district, drainage district, or any other political subdivision of the state; or any person, copartnership, corporation, or association.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.167. EXPENSE OF PROCURING COOPERATION AND CONTRIBUTIONS FROM OTHER AGENCIES. A district may incur reasonable expense to procure cooperation under Section 51.166 of this code in adding to the area of the district or with contributions to the cost of improvements made by the district. The contributions may be either a percentage of cost or a definite annual sum.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.168. AUTHORITY OF CONTRIBUTOR. (a) Any water improvement district, water control and improvement district, levee improvement district, county, city, town, or other political subdivision of the state may contract to contribute to the cost of the construction of drainage, flood-control or water-supply improvements, or the changing of land elevations which need correction. The improvements to be constructed may be outside the contributing district, municipality, or other political subdivision of the state, and may be located outside the state or the United States.

(b) The works may be constructed by any agency.

(c) The contribution shall be proportionate to the benefit which the contributor will derive from the proposed improvements.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.169. ISSUANCE OF BONDS BY CONTRIBUTOR. (a) The contract may provide for the issuance of bonds by the contributor and for direct payment from the proceeds of the bonds to contractors on the estimates of the engineer for the contributor.

(b) Before issuing bonds, a contributing political subdivision shall submit the contract for contribution to its electors for approval and for authority to issue the bonds, fix a lien to secure the bonds, and levy, assess, and collect taxes to retire the bonds. The procedure by a contributing political subdivision of the state shall conform to the applicable law under which the political subdivision was organized and authorized to create bonded

indebtedness.

(c) The disposition of the proceeds of the bonds shall conform to the approved contract of contribution.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.170. ANNUAL TAX BY CONTRIBUTOR. (a) The contract for contribution may provide that instead of issuing bonds the contributor may levy, assess, and collect an annual tax in a specific sum. The levy or assessment is a lien on the property subject to the contributor's taxing power.

(b) The contributor shall collect the tax at its own expense and pay it annually to the district to which the contribution is to be made. The district shall hold the annual payment as a trust fund and annually apply it to the bonds issued by it to provide funds for the construction of the improvements to which the contribution is made.

(c) The contributor shall submit the contract of contribution to its electors for approval and for authority to levy and assess a sufficient tax to meet the annual payments fixed in the contract. The election for the approval of the contract and the authorized taxes for the fulfillment of the contract shall conform to appropriate law under which the contributing political subdivision was organized and authorized to create bonded indebtedness.

(d) Payment of the annual sums of contribution shall conform to the contract of contribution.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.171. CONTRIBUTIONS FROM UNAPPROPRIATED OR AVAILABLE FUNDS OF CONTRIBUTOR. (a) If the proposed contributor has an unappropriated fund or a fund which is not required for actual use even though otherwise appropriated, the fund may be withdrawn from the project which does not need it and may be applied to pay contributions to the cost of the improvements considered to be a benefit to the contributor but to be constructed by another agency or jointly by the contributor and another agency.

(b) The board of the contributing political subdivision may contract for contributions and contribute from an unappropriated or

available fund without submitting the contract and contributions to a vote of the electors of the contributor. However, the contributions shall not be made if they impair the ability of the contributor to meet any outstanding obligation or to adequately and economically discharge the contributor's duty to its electorate or constituency.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.172. LIABILITY ON CONTRACTS OF ACQUIRED IRRIGATION SYSTEM. If a district acquires an established irrigation system which has contracted to supply water to others and the holders of the contracts or the lands entitled to service of water are not within the district, the contracts and duties shall be performed by the district in the same manner and to the same extent that any other purchaser of the system would be bound.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.173. AUTHORITY TO LEASE IRRIGATION SYSTEM SERVING THE DISTRICT. (a) The board, by resolution, may lease all or part of any irrigation system serving all or part of the district, including distribution laterals, trunk or transmission canals, pumping plants, intakes, and all usual or necessary appurtenances. The board's resolution will specify the term of the lease, which may not be more than 40 years.

(b) The board may lease property located partly outside the boundaries of the district and may sell surplus water to other districts and to other consumers.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.174. COVENANTS AND AGREEMENTS INCLUDED IN LEASE. (a) The lease shall expressly state that the sums payable under the terms of the lease and the lease itself shall not constitute an indebtedness or pledge of the general credit of the district within the meaning of any constitutional or statutory limitation of indebtedness. The lease shall contain a statement that payments due under it are not payable from any funds raised or to be raised by

taxation.

(b) The lease may contain covenants and agreements which are not inconsistent with the provisions of this code which authorize the lease for:

(1) the management and operation of the leased properties;

(2) the imposition and collection of charges for water;

(3) the disposition of the proceeds of charges;

(4) the insurance, protection, and maintenance of the leased properties;

(5) the creation of other obligations payable from the revenues derived from the operation of the leased properties;

(6) the keeping of books and records by the district; and

(7) other pertinent provisions which the board considers desirable to assure the payment of amounts due under the lease.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.175. REVENUE FOR PAYMENT OF LEASE RENTAL. (a) All money due the lessor under the lease shall be payable solely from the revenue derived by the district from the sale of water supplied through the leased system.

(b) The board shall set and collect charges for the water supplied through the leased properties to produce sufficient revenue at all times to allow for delinquencies and to pay promptly all rental payments becoming due under the terms of the lease. The board may agree to deposit this money in a separate fund as a first charge on the gross revenue received each year from sales of water, and which shall not be used for any other purpose.

(c) The board may agree in the lease to pay all expenses of operating and maintaining the leased properties from the fund provided by the board each year for the maintenance and operation expenses of the district so that the gross revenue from sale of water will be available exclusively for payment of rentals until the amount required for rentals each year is paid into the separate rental fund.

(d) If the board includes this agreement in the lease, the board shall provide for the payment of sums into the maintenance fund from sources other than the remaining portions of the gross revenue from the sale of water not required to pay rentals which are sufficient each year to pay all expenses of operating the district

and maintaining and operating its properties and facilities, including the leased properties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.1751. ADDITIONAL SOURCES FOR PAYMENT OF LEASE. (a) Notwithstanding any other provision of this chapter, a district may make payments from tax revenue under a lease of all or any part of an irrigation system as provided in Section 51.173 of this code if the lease is approved by a majority of the qualified voters voting at an election held for that purpose.

(b) An election for the approval of a lease shall be called and conducted, the returns canvassed, and notice of the election given under the same procedure as a bond election in the district. The election may be held on the same day as a bond election of the district.

(c) If the lease is approved at the election and authorized by the board of directors, it shall constitute an obligation against the taxing power of the district, and the district shall levy, assess, and collect taxes to the extent provided in the lease.

Added by Acts 1979, 66th Leg., p. 883, ch. 403, Sec. 2, eff. June 6, 1979.

Sec. 51.176. RECEIVER FOR LEASED IRRIGATION SYSTEM. (a) If the district defaults in the payments due under a lease, the lessor may petition a court of competent jurisdiction to appoint a receiver for the leased properties.

(b) The receiver shall operate the properties and collect and distribute the revenue according to the terms of the lease and the direction of the court.

(c) The receiver has the same rights and powers as the board in its operation of the leased properties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.177. JOINT LEASE BY TWO OR MORE DISTRICTS. The boards of two or more districts may adopt resolutions to enter into a joint

lease under the provisions of Section 51.173 of this code. The joint lease shall specify clearly the respective rights and liabilities of the districts and shall be subject to all the provisions of Sections 51.173-176 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.178. AUTHORITY TO ACQUIRE IRRIGATION SYSTEM SUBJECT TO MORTGAGE. A district may acquire by gift, grant, or purchase any part of an irrigation system serving the district which is subject to a mortgage or encumbrance. The mortgage or encumbrance shall not be assumed by the district and shall not be an indebtedness of the district but shall constitute solely a charge on the encumbered property and the revenue from it.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.179. REVENUE FOR PAYMENT OF MORTGAGE. (a) The board may determine conclusively by resolution whether the mortgage or encumbrance represents all or part of the cost of the acquired property and constitutes a purchase money lien on the property.

(b) The board may contract to use and pledge its revenue derived solely from the sale of water and services supplied through the acquired properties for the payment of a purchase money lien.

(c) The board also may use revenue from taxation or from the issuance and sale of bonds to pay all or part of the amount due under the encumbrance if a majority of the electors of the district voting at an election on this proposition approve its use.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.180. ELECTION TO APPROVE REVENUE FOR PAYMENT OF MORTGAGE. (a) If tax and bond revenue is pledged to pay amount due under the encumbrance, the district must hold an election and receive the approval of the electors.

(b) An election to approve the use of tax and bond revenue shall be held in the same manner and with the same voters' qualifications as provided for elections on the issuance of the bonds

of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.181. JOINT ACQUISITION OF MORTGAGED SYSTEM BY TWO OR MORE DISTRICTS. (a) Two or more districts jointly may acquire by gift, grant, or purchase any part of an irrigation system serving the districts subject to a mortgage or encumbrances in the same manner that a single district may acquire the system.

(b) In the proceedings authorizing the acquisition, the boards of the respective districts shall define clearly the respective rights, interest, and liability of the districts in the acquired property and in the mortgage or encumbrance.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.182. AUTHORITY TO LEASE FACILITIES TO WATER CUSTOMERS. (a) A district may lease to any person, firm, or corporation which is a bona fide water customer of the district any of its river pump stations, conveyance canals, off-channel reservoirs, reservoir pump stations, water mains, water treatment plants, or other facilities used in connection with them. The lease may include any of the district's land which is appropriate to the utilization of the leased facilities, including but not limited to land acquired by eminent domain.

(b) The board and the lessee shall agree on the form of the lease and its terms, conditions, provisions, and stipulations; however, the duration of the lease shall not be longer than the duration of the water contract between the district and the lessee under the primary term of the water contract and any renewal or extension of it.

(c) After a lease to a water customer is authorized by the board, the lease shall be executed by the president or vice president of the board and attested by the secretary. The lease is valid and effective without any other requirement or prerequisite by the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.184. PREFERENCE IN USE OF WATER. (a) The board may award the use of district water in the following order of preference and superiority:

(1) domestic and municipal use;

(2) industrial use, other than the development of hydroelectric power;

(3) irrigation;

(4) development of hydroelectric power;

(5) pleasure and recreation.

(b) The board may withdraw water from an inferior use and appropriate the water to a superior use when required for the welfare of the district.

(c) The board must use the condemnation procedures in Subchapter F of this chapter for a withdrawal or diversion of the use of water which affects a vested right.

(d) The board may implement the action prescribed in Subsection (b) or in Subsections (b) and (c) above, and shall obtain necessary amendments to the district's permit, certified filing, or certificate of adjudication in the manner provided in Section 11.122 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1975, 64th Leg., p. 1250, ch. 473, Sec. 1, eff. June 19, 1975; Acts 1981, 67th Leg., p. 980, ch. 367, Sec. 16, eff. June 10, 1981.

Sec. 51.185. SUIT TO PROTECT WATER RIGHTS. The board may institute and maintain any suit or suits to protect the water supply or other rights of the district, to prevent any unlawful interference with the water supply or other rights of the district, or to prevent a diversion of its water supply by others.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.186. TRANSFER OF WATER RIGHT. If there is land in a district which has a water right from a source of supply acquired by the district but the land is difficult or impracticable to irrigate from that source of supply, the district may allow transfer of the water right to other land which is adjacent to the district. The

adjacent land may be admitted to the district with the same right of water service as the land from which the water was transferred.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.187. SELLING WATERPOWER PRIVILEGES. (a) The district may enter into a contract to sell waterpower privileges if power can be generated from water flowing from the district's reservoirs or within its canal system.

(b) The sale of waterpower privileges may not interfere with the district's obligation to furnish an adequate supply of water for the purpose for which the district was organized and for municipal purposes in districts which furnish water for municipal purposes.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.188. SELLING SURPLUS WATER. The district may sell any surplus district water for use in irrigation or for domestic or commercial uses to any person who owns or uses land in the vicinity of the district or to other districts which include land in the same vicinity.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.189. PUMPING WATER TO ANOTHER DISTRICT. If the board considers it advisable, it may contract to pump for or supply another district any water in which the other district has a right. The board shall provide the terms of the contract.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.190. OBTAINING TOPOGRAPHIC MAPS AND DATA. The executive director shall furnish to a district topographic maps and data concerning all projects for the control of floods undertaken by the district and all projects for the storage of water or creation of reservoirs undertaken by the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981.

Sec. 51.194. SALE OF PROPERTY NOT ACQUIRED TO CARRY OUT THE PLANS OF THE DISTRICT. The board may sell property bid in by it at any sale under foreclosure of its tax lien or of its lien for charges or assessments, or any property acquired by it other than for the purpose of carrying out the plans of the district, without formally determining that the property is not required to carry out the plans of the district, without giving notice of the intent of the district to sell the property, and without applying the proceeds of the sale as provided in Section 51.192 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.195. PROHIBITED CHARGES AND FEES. (a) In this section, "undeveloped property" means property within the district to which water or sewer services are actually available and to which no water or sewer connections have been made.

(b) Except as provided in Subsection (c) of this section, no district in which the ratio of the assessed valuation of property to the amount of bonded indebtedness of the district is at least 15 to 1, proposing to provide or actually providing water and sewer services or either of these services to household users as the principal function of the district, may adopt and impose on the owners of undeveloped property in the district a charge or fee on the undeveloped property that is in addition to taxes levied on that property.

(c) If the board of directors of a district covered by this section desires to adopt and impose a charge or fee prohibited by Subsection (b) of this section, it shall submit to the commission a petition for authority to adopt and impose the charge or fee. If the commission finds that it will be in the best interest of the district and property owners of the district, the commission shall approve the adoption and imposition of the charge or fee for a period of not more than three years. The imposition of a charge or fee may be renewed for additional periods of three years in the manner provided in this

section for initial approval of the charge or fee.

Added by Acts 1979, 66th Leg., p. 437, ch. 198, Sec. 1, eff. Jan. 1, 1980.

Sec. 51.196. DEVELOPMENT OF UNDERGROUND WATER BY CERTAIN DISTRICTS. A conservation and reclamation district created by special law under the authority of Section 59, Article XVI, Texas Constitution, and designated as a municipal water district to which the administrative and taxing provisions applicable to districts governed by this chapter apply, may develop or otherwise acquire underground sources of water, notwithstanding a provision in that district's special law otherwise prohibiting the development of acquisition of underground water.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.45, eff. Sept. 1, 1997.

SUBCHAPTER E. ELECTION PROVISIONS

Sec. 51.221. ELIGIBILITY TO VOTE: MAVERICK COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1. (a) In this section, "district" means the Maverick County Water Control and Improvement District No. 1.

(b) A person is eligible to vote in an election conducted by the district if the person:

(1) is 18 years of age or older;

(2) is a United States citizen;

(3) is an individual who holds title to or an interest in title to irrigable farmland or ranch land within the boundaries of the district; and

(4) receives and uses irrigation water delivered by the district by and through the district's canal system.

(c) A person eligible to vote under Subsection (b) must register with the district not later than the 30th day before the date of a district election in order to vote in that district election. The district shall file with the county clerk of Maverick County a certified copy of the list of the district's registered voters not later than the 25th day before the date of each district election.

Added by Acts 2001, 77th Leg., ch. 60, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER F. ENFORCEMENT

Sec. 51.241. PENALTY FOR VIOLATION OF REGULATION. A person who violates a regulation adopted by a district under this chapter or other law commits an offense. An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1423, Sec. 27, eff. June 17, 2001. Renumbered from Water Code Sec. 51.221 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(149), eff. Sept. 1, 2003.

SUBCHAPTER G. WATER CHARGES AND ASSESSMENTS

Sec. 51.301. STATEMENT ESTIMATING WATER REQUIREMENTS AND PAYMENT OF CHARGE. (a) If required by the board, each person who desires to receive irrigation water at any time during the year shall furnish the secretary of the board a written statement of the acreage the person intends to irrigate and the different crops the person intends to plant with the acreage of each crop.

(b) At the time the acreage estimate is furnished to the secretary, each person applying for water shall pay the portion of the water charge or assessment set by the board.

(c) If a person does not furnish the statement of estimated acreage or does not pay the part of the water charge or assessment set by the board before the date for fixing the assessment, the district is not obligated to furnish water to that person during that year.

Acts 1971, 62nd Leg., p. 324, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 2, eff. September 1, 2013.

Sec. 51.302. CONTRACTS WITH PERSON USING IRRIGATION WATER. (a) The board may require each person who desires to use irrigation water during the year to enter into a contract with the district which states the acreage to be irrigated, the crops to be planted, the amount to be paid for the water, and the terms of payment.

(b) If a person irrigates more acreage than the person's contract specifies, the person shall pay for the additional service.

(c) The directors also may require a person using irrigation water to execute a negotiable note or notes for all or part of the amount owed under the contract.

(d) The contract is not a waiver of the lien given to the district under Section 51.309 against the crops of a person using irrigation water for the service furnished to the person.

Acts 1971, 62nd Leg., p. 324, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 3, eff. September 1, 2013.

Sec. 51.303. AUTHORITY TO DETERMINE RULES AND REGULATIONS. The board may adopt, alter, and rescind rules, regulations, and standing and temporary orders which do not conflict with the provisions of this subchapter and which govern:

(1) methods, terms, and conditions of water service;

(2) applications for water;

(3) assessments, charges, fees, rentals, or deposits for maintenance and operation;

(4) payment and the enforcement of payment of the assessments, charges, fees, rentals, or deposits;

(5) furnishing irrigation water to persons who did not apply for it before the date of assessment if required; and

(6) furnishing water to persons who wish to take water for irrigation in excess of their original applications or for use on land not covered by their original applications if required.

Acts 1971, 62nd Leg., p. 325, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 4, eff. September 1, 2013.

Sec. 51.304. BOARD'S ESTIMATE OF MAINTENANCE AND OPERATING EXPENSES. The board, on or as soon as practicable after a date fixed by standing order of the board, shall estimate the expenses of maintaining and operating the district's water delivery system for

the next 12 months. The board may change the 12-month period for which it estimates the expenses of maintaining and operating the water delivery system by estimating such expenses for a shorter period so as to adjust to a new fixed date and thereafter estimating the expenses for 12-month periods following the adjusted fixed date.

Acts 1971, 62nd Leg., p. 325, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1997, 75th Leg., ch. 789, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 5, eff. September 1, 2013.

Sec. 51.305. DISTRIBUTION OF ASSESSMENT. (a) The board by order shall allocate a portion of the estimated maintenance and operating expenses that shall be paid by assessment against all land in the district to which the district can furnish irrigation water through its water delivery system or through an extension of its water delivery system. This assessment shall be levied against all irrigable land in the district on a per acre basis, whether or not the land is actually irrigated.

(b) The board shall determine from year to year the proportionate amount of the expenses which will be borne by all water users receiving water delivery from the district.

(c) The remainder of the estimated expenses shall be paid by assessments, charges, fees, rentals, or deposits required of persons in the district who use or who make application to use water. The board shall prorate the remainder among the applicants for irrigation water and may consider:

(1) the acreage each applicant will plant, the crop the applicant will grow, and the amount of water per acre used for irrigation purposes; and

(2) other factors deemed appropriate by the board with respect to water used for other nonirrigation uses.

(d) A landowner of irrigable land in the district or a user of water delivered by the district for any purpose other than irrigation who disputes all or a part of a board order that determines the amount of an assessment, charge, fee, rental, or deposit may file a petition under Section 11.041. That petition filed with the commission is the sole remedy available to a landowner or user of

water described by this subsection.

Acts 1971, 62nd Leg., p. 325, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1971, 62nd Leg., p. 1770, ch. 518, Sec. 12, eff. May 31, 1971.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 6, eff. September 1, 2013.

Sec. 51.306. NOTICE OF ASSESSMENTS. (a) Public notice of all assessments imposed under Section 51.305(a) shall be given by posting printed notice of the assessment in at least one public place in the district.

(b) Not later than the fifth day before the date on which the assessment is due, notice shall be mailed to each landowner at the address which the landowner shall furnish to the board.

(c) Notice of special assessments shall be given within 10 days after the assessment is levied.

Acts 1971, 62nd Leg., p. 325, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 7, eff. September 1, 2013.

Sec. 51.307. PAYMENT OF ASSESSMENTS. (a) All assessments imposed under Section 51.305(a) shall be paid in installments at the times fixed by the board.

(b) If a crop for which water was furnished by the district is harvested before the due date of any installment payment, the entire unpaid assessment becomes due at once and shall be paid within 10 days after the crop is harvested and before the crop is removed from the county or counties in which it was grown.

Acts 1971, 62nd Leg., p. 325, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 8, eff. September 1, 2013.

Sec. 51.308. COLLECTION OF ASSESSMENTS BY TAX ASSESSOR AND COLLECTOR. (a) Under the direction of the board, the assessor and collector, or other person designated by the board, shall collect all assessments imposed under Section 51.305(a) for maintenance and operating expenses.

(b) The assessor and collector shall execute a bond in an amount determined by the board, conditioned on the faithful performance of the duties of the assessor and collector and accounting for all money collected.

(c) The assessor and collector shall keep an account of all money collected and shall deposit the money as collected in the district depository. The assessor and collector shall file with the secretary of the board a statement of all money collected once each month.

(d) The assessor and collector shall use a duplicate receipt book, give a receipt for each collection made, and retain in the book a copy of each receipt, which shall be kept as a record of the district.

Acts 1971, 62nd Leg., p. 326, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 9, eff. September 1, 2013.

Sec. 51.309. LIEN AGAINST CROPS. (a) The district shall have a first lien, superior to all other liens, against all crops grown on a tract of land in the district to secure the payment of an assessment imposed against the tract under Section 51.305(a), interest, and collection or attorney's fees.

(b) If the crops against which the district has a lien under this section are cultivated on a basis other than annual replanting, the owner of the crops shall record with the county clerk of the county where the land on which the crops are cultivated is located a legally sufficient description of the land, including a metes and bounds description or a plat reference.

Acts 1971, 62nd Leg., p. 326, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 10, eff. September 1, 2013.

Sec. 51.310. LIST OF DELINQUENT ASSESSMENTS. Assessments imposed under Section 51.305(a) not paid when due shall become delinquent on the first day of the month following the date payment is due, and the board shall keep posted in a public place in the district a correct list of all persons who are delinquent in paying assessments. If a person who owes an assessment has executed a note and contract as provided in Section 51.302, the person may not be placed on the delinquent list until after the maturity of the note and contract.

Acts 1971, 62nd Leg., p. 326, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1997, 75th Leg., ch. 789, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 11, eff. September 1, 2013.

Sec. 51.311. WATER SERVICE DISCONTINUED. (a) If a landowner fails or refuses to pay a water assessment or a person fails to pay a charge, fee, rental, or deposit imposed under this chapter or Chapter 49 when due, the landowner's or person's water supply shall be cut off, and no water may be furnished to the land until all back assessments or other amounts owed to the district are fully paid. The discontinuance of water service is binding on all persons who own or acquire an interest in land for which assessments or other amounts owed to the district are due.

(b) A landowner or person whose water service has been discontinued under Subsection (a) may request that the board reconsider the discontinuance related to a charge, fee, rental, deposit, or penalty, and may not request that the board reconsider a discontinuance related to an assessment. If the board declines to reconsider the discontinuance, the landowner or person may file a petition under Section 11.041. That petition filed with the commission is the sole remedy available to a landowner or person described by this subsection.

Acts 1971, 62nd Leg., p. 326, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 12, eff.

September 1, 2013.

Sec. 51.312. SUITS FOR DELINQUENT ASSESSMENTS. Suits for delinquent water assessments or other amounts owed to the district under this subchapter may be brought either in the county in which the district is located or in the county in which the defendant resides. All landowners are personally liable for assessments imposed under Section 51.305(a).

Acts 1971, 62nd Leg., p. 326, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 13, eff. September 1, 2013.

Sec. 51.313. INTEREST AND COLLECTION FEES. (a) All assessments imposed under Section 51.305(a) shall bear interest from the date payment is due at the rate of 15 percent a year. Assessments not paid by the first day of the month following the date payment is due are delinquent, and a penalty of up to 15 percent of the amount of the past-due assessment shall be added to the amount due.

(b) If suit is filed to foreclose a lien on crops or if a delinquent assessment is collected by an attorney before or after suit, an additional amount of 15 percent on the unpaid assessment, penalty, and interest shall be added as collection or attorney's fees.

Acts 1971, 62nd Leg., p. 327, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1995, 74th Leg., ch. 346, Sec. 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 789, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 14, eff. September 1, 2013.

Sec. 51.314. RIGHTS OF THE UNITED STATES. (a) If the board enters into a contract with the United States, the remedies in this subchapter available to the district also shall apply to enforce payment of charges due to the United States. The federal reclamation

laws shall also apply.

(b) The directors shall distribute and apportion all water acquired by the district under a contract with the United States in accordance with acts of Congress, rules and regulations of the secretary of the interior, and provisions of the contract.

Acts 1971, 62nd Leg., p. 327, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.315. SURPLUS ASSESSMENTS. If assessments made under this subchapter are more than sufficient to pay the necessary expenses of the district, the balance shall be carried over to the next year.

Acts 1971, 62nd Leg., p. 327, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.316. INSUFFICIENT ASSESSMENTS. If the assessments made under this subchapter are not sufficient to pay the necessary expenses of the district, the unpaid balance shall be assessed pro rata, in accordance with the assessments made for the current year. The additional assessments shall be paid under the same conditions and penalties within 30 days after the date of assessment.

Acts 1971, 62nd Leg., p. 327, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.317. DETERMINING MAINTENANCE AND OPERATION CHARGES. The board may make, establish, and collect maintenance and operation charges for service on the basis of the quantity of water furnished or appropriate measure of the service rendered.

Acts 1971, 62nd Leg., p. 327, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.318. CHARGES FOR MAINTENANCE EXPENSES. (a) If maintenance charges are based on the quantity of water used, a fixed minimum charge may be made on all land, water connections, or other service entitled to receive and use water. An additional charge may be made for the use of more water than that covered by the minimum charge.

(b) The board may install proper measuring devices or require that they be installed.

Acts 1971, 62nd Leg., p. 327, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.319. CHARGE TO CITIES AND TOWNS. If a district includes a city or town or contracts with a city or town to supply water to it, the charge for the use of the water and the time and manner of payment shall be determined by the board or fixed by the contract made with the board.

Acts 1971, 62nd Leg., p. 327, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.320. LOANS FOR MAINTENANCE AND OPERATING EXPENSES. The board may borrow money to pay maintenance and operating expenses at an interest rate of not more than 10 percent a year and may pledge as security any of its notes or contracts with water users or accounts against them.

Acts 1971, 62nd Leg., p. 328, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.321. WATER SERVICE: REFUSED. The board may refuse water service to any person who refuses to pay the charges and assessments for water service or who fails or refuses to pay any taxes levied against his property after six months from the date the taxes become delinquent.

Acts 1971, 62nd Leg., p. 328, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER H. WASTE DISPOSAL AND CONTROL OF STORM WATER

Sec. 51.331. AUTHORITY TO DISPOSE OF WASTE AND CONTROL STORM WATER. (a) A district may include in its purposes and plans all improvements, facilities, plants, equipment, and appliances incident to or helpful or necessary to the collection, transportation, processing, disposal, and control of all domestic, industrial, or communal wastes, whether fluids, solids, or composites, and to gather, conduct, divert, and control local storm water or other local

harmful excesses of water.

(b) The district may use any mechanical or chemical means or processes incident, necessary, or helpful to accomplish these purposes, and to conserve and promote the public health and welfare, and to protect, effect, or restore the purity and sanitary condition of the state's water.

Acts 1971, 62nd Leg., p. 328, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.332. INCREASING DISTRICT'S POWERS. (a) A district operating under the provisions of this chapter which did not at the time of its creation have the powers provided in Section 51.331 of this code may assume the additional powers in the same manner and by the same procedures as provided in this subchapter, except that it is not necessary to hold an election to confirm the order establishing the district's increased powers.

(b) The board may not issue a money obligation to finance the increased functions, facilities, and powers until after the electors of the district have authorized it by a constitutional and statutory majority vote as provided by this chapter to control the issuance of preliminary bonds or construction bonds as the proposal may require.

Acts 1971, 62nd Leg., p. 328, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.333. APPROVAL OF PETITION CREATING DISTRICT. (a) The commission shall hear and determine the petition to create a district to exercise the powers and functions provided in Section 51.331 of this code.

(b) The commission shall hear and determine the petition under the applicable provisions of Sections 51.027-51.031 of this code.

(c) The executive director shall render technical aid concerning the petition and plans of the district.

(d) Nothing in this section impairs the right of the commissioners court to grant a petition under the provisions of Section 51.021 of this code relating to a district to be located wholly in one county if the district will not have the powers provided in Section 51.331 of this code.

Acts 1971, 62nd Leg., p. 328, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Amended by Acts 1981, 67th Leg., p. 980, ch. 367, Sec. 17, eff. June 10, 1981; Acts 1995, 74th Leg., ch. 76, Sec. 11.322, eff. Sept. 1, 1995.

Sec. 51.334. ELECTION PROVISIONS. The provisions of Sections 51.035-51.037 of this code shall not apply to an election to create a district to exercise the powers provided in Section 51.331 of this code.

Acts 1971, 62nd Leg., p. 329, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.335. OTHER GOVERNMENTAL AGENCIES INCLUDED. (a) A district proposing to exercise the powers and to perform the functions provided in this subchapter may include any part of areas already included within the boundaries of any political subdivision, governmental agency, or body politic of the state.

(b) The district shall not usurp functions or duplicate a service already adequately exercised or rendered by the other governmental agency except:

(1) under a valid contract with the other governmental agency; or

(2) as provided by Subsection (c).

(c) The district may finance, develop, and maintain recreational facilities under Subchapter N, Chapter 49, even if similar facilities may be provided by a political subdivision or other governmental entity included wholly or partly in the district.

Acts 1971, 62nd Leg., p. 329, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 25, eff. September 1, 2013.

Sec. 51.336. ADDITIONAL LAND. Additional defined areas may be added to the district in the manner provided in this subchapter for creation of a district.

Acts 1971, 62nd Leg., p. 329, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.337. POWERS OF DISTRICT. The district has all the powers and rights of procedure, financing, construction, maintenance, rehabilitation, operation, and administration conferred by Article XVI, Section 59, of the Texas Constitution, and by this chapter.

Acts 1971, 62nd Leg., p. 329, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.338. RULES, REGULATIONS, AND CHARGES. (a) The district may adopt and enforce reasonable rules, regulations, and specific charges, fees, or rentals, in addition to taxes, for providing any district facility or service.

(b) The board shall publish a copy of the adopted orders and regulations once a week for two consecutive weeks in one or more newspapers with general circulation in the district and record the adopted orders and regulations in full in the minutes of the district.

(c) After the required publication and recording, the police power of the district, as provided in this chapter, may be exercised to enforce the intent of the orders, and the district may discontinue a facility or service to prevent an abuse or to enforce payment of a due and unpaid charge, fee, or rental, including taxes that are due and have remained unpaid for at least six months on the date of the discontinuance.

Acts 1971, 62nd Leg., p. 329, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1989, 71st Leg., ch. 502, Sec. 1, eff. June 14, 1989; Acts 1989, 71st Leg., ch. 1218, Sec. 5, eff. Aug. 28, 1989.

Sec. 51.339. TAXES. The district, either solely or in connection with other powers granted by this chapter, may impose taxes in addition to the taxes which may have been or may be imposed by another governmental agency included in the district.

Acts 1971, 62nd Leg., p. 329, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.340. CERTAIN DAMAGES CAUSED BY SEWAGE BACKUP. (a) A district may pay actual property damages caused by the backup of the district's sanitary sewer system regardless of whether the district

would be liable for the damages under Chapter 101, Civil Practice and Remedies Code.

(b) This section does not waive governmental immunity from suit or liability.

Added by Acts 2011, 82nd Leg., R.S., Ch. 181 (S.B. 1140), Sec. 1, eff. May 28, 2011.

SUBCHAPTER I. GENERAL FISCAL PROVISIONS

Sec. 51.351. CONSTRUCTION FUND. (a) The proceeds from the sale of bonds shall be deposited in the construction fund.

(b) Money deposited in the construction fund shall be used to pay expenses, debts, and obligations necessarily incurred in the creation, establishment, and maintenance of the district and to pay the purchase price of property and construction contracts, including purchases for which the bonds were issued.

(c) If the bonds were issued in accordance with a contract with the United States, debts and obligations may be paid from the construction fund under the terms of or incident to the contract.

(d) After the payment of obligations for which the bonds were issued, any remaining money in the construction fund may be transferred to the maintenance fund.

Acts 1971, 62nd Leg., p. 330, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.352. MAINTENANCE FUND. (a) The district shall have a maintenance fund which shall include money collected by assessment or other method for the maintenance, repair, and operation of the properties and plant of the district or for temporary annual rental due to the United States.

(b) The maintenance fund shall be used to pay all expenses of maintenance, repair, and operation of the district except the expenses of assessing and collecting taxes for the interest and sinking fund. Expenses for collecting taxes for the interest and sinking fund shall be paid from the interest and sinking fund.

(c) The district may pay from the maintenance fund other expenses for which the payment is not provided in this chapter.

Acts 1971, 62nd Leg., p. 330, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.353. AMORTIZATION AND EMERGENCY FUND. (a) The board shall have a competent engineer make an inspection and valuation of the physical property of the district which is subject to decay, obsolescence, injury, or damage by sudden, accidental, or unusual causes, and based on the inspection and valuation, the engineer shall determine as nearly as he can a sufficient amount to be set aside annually to pay for replacement of each item of physical property at the end of its economic life or for the restoration or replacement of any item of physical property if it is lost, injured, or damaged.

(b) The board shall set aside a portion of the maintenance fund as it is collected equal to the amount determined under Subsection (a) of this section and shall place this money in the amortization and emergency fund. No part of this fund may be spent except to replace amortized property or to replace or restore lost, injured, or damaged property.

(c) Any amount in the amortization and emergency fund which is not spent for the purposes for which the fund was created may be invested in bonds or interest bearing securities of the United States.

(d) The board is not required to create an amortization and emergency fund, but if the board does create the fund, it shall be kept up and maintained.

Acts 1971, 62nd Leg., p. 330, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER K. ISSUANCE OF BONDS

Sec. 51.401. AUTHORITY TO ISSUE BONDS OF DISTRICTS OPERATING UNDER ARTICLE III, SECTION 52, OF THE TEXAS CONSTITUTION. A district which is operating under Article III, Section 52, of the Texas Constitution, may issue bonds and lend its credit in an amount of not more than one-fourth of the assessed valuation of the real property in the district. However, the total indebtedness of any city or town may never be more than the limits imposed by the Texas Constitution.

Acts 1971, 62nd Leg., p. 335, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.402. AUTHORITY TO ISSUE BONDS OF DISTRICTS OPERATING

UNDER ARTICLE XVI, SECTION 59, OF THE TEXAS CONSTITUTION. A district operating under Article XVI, Section 59, of the Texas Constitution, may incur debt evidenced by the issuance of bonds for any purpose authorized by this chapter, Chapter 49, or other applicable laws, including debt which is necessary to provide improvements and maintenance of improvements to achieve the purposes for which the district was created.

Acts 1971, 62nd Leg., p. 335, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:
Acts 2005, 79th Leg., Ch. 962 (H.B. 1644), Sec. 2, eff. June 18, 2005.

Sec. 51.403. AMOUNT OF DEBT LIMITED BY CONSTITUTION. No district may issue bonds or create indebtedness in an amount which is more than that authorized by the Texas Constitution.

Acts 1971, 62nd Leg., p. 335, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.404. ISSUANCE OF PRELIMINARY BONDS. A district may issue preliminary bonds to create a fund to pay:

(1) costs of organization;
(2) costs of making surveys and investigations;
(3) attorney's fees;
(4) costs of engineering work;
(5) costs of the issuance of bonds; and
(6) other costs and expenses incident to organization of the district and its operation in investigating and determining plans for its plant and improvements and in issuing and selling bonds to provide for permanent improvements.

Acts 1971, 62nd Leg., p. 335, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.405. ELECTION ON PRELIMINARY BONDS. (a) The proposition for the issuance of preliminary bonds shall be submitted to the electors of the district.

(b) The election may be held at the same time as the election to confirm the creation of the district or at a later time.

(c) The board shall make an estimate of the expenses to be paid with the proceeds of the preliminary bonds and shall include this estimate in the notice of election.

Acts 1971, 62nd Leg., p. 336, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.406. CONDITIONS OF PRELIMINARY BONDS. (a) After preliminary bonds have been authorized at an election, the board may order the issuance of the bonds in an amount which is not more than the amount stated in the notice of election.

(b) The bonds may be paid serially or on amortization at any time not more than 10 years from their date.

(c) Although the bonds will be known and designated in the records as preliminary bonds, it is not necessary to make this designation on the bonds.

Acts 1971, 62nd Leg., p. 336, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.407. TAX TO PAY PRELIMINARY BONDS. At the time preliminary bonds are issued, a tax shall be levied to pay principal and interest as the bonds mature and to pay the cost of assessing and collecting the taxes.

Acts 1971, 62nd Leg., p. 336, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.408. ISSUANCE OF BONDS. (a) After a district is created and has adopted plans for construction of a plant and improvements, it may issue bonds to pay for constructing the plant and improvements and to pay costs and charges incident to the construction including the cost of necessary property and the retirement of preliminary bonds.

(b) The maximum amount of bonds which may be issued may not be more than the amount of the engineer's estimate plus the additional amounts added by the board in the election order.

Acts 1971, 62nd Leg., p. 336, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.410. ENGINEER'S REPORT. (a) Before an election is held to authorize the issuance of bonds, an engineer's report, which includes the plans and improvements to be constructed together with maps, plats, profiles, and data showing and explaining the engineer's report, shall be filed in the office of the district and shall be available for public inspection.

(b) The engineer's report shall contain a detailed estimate of the cost of improvements, including the cost of any property to be purchased, and an estimate of the time required to complete the improvements to the degree to which they may provide service.

(c) The board shall consider the engineer's report and may make changes in the report and note them in the minutes.

Acts 1971, 62nd Leg., p. 337, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.411. ELECTION ORDER. (a) After the engineer's report is filed and approved, the board may order an election in the district to authorize the issuance of the bonds.

(b) In the order, the board shall estimate the total amount of money needed to cover the items listed in Section 51.409 of this code.

(c) The election order shall state:

(1) the proposed maximum interest rate on the bonds;

(2) the maximum maturity date of the bonds;

(3) the time and places for holding the election; and

(4) the names of the election officers.

(d) The election order shall be entered in the minutes of the board.

Acts 1971, 62nd Leg., p. 337, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.413. BALLOTS. (a) The proposition to be voted on shall be the issuance of the total amount of bonds covered by the engineer's estimate plus additional estimates made by the board.

(b) The ballots shall be printed to provide for voting for or against: "The issuance of bonds and the levy of taxes to pay for the bonds."

(c) If a contract is proposed with the United States under the federal reclamation laws, the ballots shall be printed to provide for

voting for or against: "The contract with the United States and the levy of a tax to pay the contract."

Acts 1971, 62nd Leg., p. 338, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.414. VOTE AT ELECTION. (a) Bonds of a district operating under the provisions of Article III, Section 52, of the Texas Constitution, may be issued only with the approval of two-thirds of the electors of the district participating in the election.

(b) In a district organized under the provisions of Article XVI, Section 59, of the Texas Constitution, bonds may be issued or indebtedness created only with the approval of a majority of the electors of the district participating in the election.

Acts 1971, 62nd Leg., p. 338, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.415. ORDER TO ISSUE BONDS OR EXECUTE CONTRACT. After the vote is canvassed and the results are declared to be favorable to the proposition, the board shall make and enter an order directing the issuance of the bonds or the execution of a contract with the United States. The bonds or contract shall be in a sufficient amount to pay for the improvements together with all necessary incidental expenses, but the amount may not be more than the amount specified in the election order and notice of election.

Acts 1971, 62nd Leg., p. 338, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.419. CONDITIONS OF BONDS. (a) The bonds may be issued to mature at the end of a term of years or to mature serially at any date which is not later than the maximum maturity date stated in the election order.

(b) The bonds may be issued at any rate of interest which is not more than the rate of interest set in the election order.

Acts 1971, 62nd Leg., p. 339, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.420. FORM OF BONDS. (a) The bonds shall be issued in

the name of the district and shall be signed by the president and attested by the secretary, with the seal of the district attached.

(b) The bonds shall be issued in denominations of $100 or multiples of $100 and shall be payable annually or semiannually.

(c) The board shall determine and include in the bonds the time, place, manner, and condition of payment of principal and interest on the bonds, but none of the bonds may be made payable more than 40 years from their date.

(d) The lien for payments due to the United States under a contract that was not accompanied by a deposit of bonds with the United States shall be a preferred lien to that of any issue of bonds or any series of any issue of bonds subsequent to the date of the contract.

Acts 1971, 62nd Leg., p. 339, ch. 58, Sec. 1, eff. Aug. 30, 1971. Subsec. (b) amended by Acts 1971, 62nd Leg., p. 1768, ch. 518, Sec. 4, eff. May 31, 1971.

Sec. 51.423. VALIDATION SUIT. (a) A district may file a suit to determine the validity of the creation of the district and the bonds.

(b) If requested by the secretary of the interior, the district shall file a suit to validate a contract made with the United States.

(c) If a validation suit is filed, the bonds do not have to be approved by the attorney general.

Acts 1971, 62nd Leg., p. 340, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.424. EFFECT OF PRIOR REGISTRATION. If bonds are approved by the attorney general and registered by the comptroller before a validation suit is filed, the filing of the suit cancels the prior registration.

Acts 1971, 62nd Leg., p. 340, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.425. PROCEDURE IN VALIDATION SUIT. (a) A validation suit shall be brought by the district in the district court of any county in which all or part of the district is located or in a

district court in Travis County.

(b) The suit shall be in the nature of a proceeding in rem.

(c) Any person who is interested in the suit may intervene and file an answer.

(d) The issue shall be tried and determined by the court and judgment shall be entered on the findings.

(e) Repealed by Acts 1981, 67th Leg., p. 2646, ch. 707, Sec. 4(50), eff. Aug. 31, 1981.

Acts 1971, 62nd Leg., p. 340, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 2646, ch. 707, Sec. 4(50), eff. Aug. 31, 1981.

Sec. 51.426. NOTICE OF VALIDATION SUIT. (a) To obtain jurisdiction of all parties to the validation suit, a general notice shall be published.

(b) The notice shall be published once a week for at least two consecutive weeks before the term of the court at which the notice is to be returned. The notice shall be published in a newspaper with general circulation in the county or counties in which the district is located, but if no newspaper is published inside the district, the notice shall be published in a newspaper in the nearest county in which a paper is published.

(c) Notice also shall be served on the attorney general in the manner provided in civil suits.

(d) The attorney general may waive notice if he is furnished a full transcript of the proceedings held in connection with the creation of the district and the issuance of the bonds or held in connection with the authorization of a contract with the United States. A copy of the contract with the United States also must be furnished.

Acts 1971, 62nd Leg., p. 341, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.427. DUTIES OF ATTORNEY GENERAL IN VALIDATION SUIT. (a) The attorney general shall examine all the proceedings and shall require any further evidence and make any further examination which he considers advisable.

(b) The attorney general then shall file an answer to the suit,

submitting the issue of whether the proceedings are valid and the bonds are legal and binding obligations of the district or whether the contract with the United States is legal and binding on the district.

Acts 1971, 62nd Leg., p. 341, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.428. JUDGMENT IN VALIDATION SUIT. (a) After the trial of the validation suit, if the judgment of the court is adverse to the district on any issue, the district may make an exception and point out the error, and the error may be corrected by the judge in the manner directed by the court.

(b) The judgment shall be rendered showing that the corrections have been made and that the bonds or the contract with the United States are binding obligations of the district.

(c) After the judgment is entered, it is res judicata in all cases which may arise in connection with:

(1) the collection of the bonds or their interests;

(2) any taxes levied to pay charges or any money required to pay a contract with the United States; and

(3) all matters relating to the organization and validity of the district or the validity of the bonds or contract.

Acts 1971, 62nd Leg., p. 341, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.429. EFFECT OF VALIDATION SUIT. (a) After a final judgment is rendered in the validation suit, the bonds or the contract with the United States shall be incontestable.

(b) No suit may be brought in any court of this state to contest or enjoin the validity of the creation of the district, any bonds which are issued, any contract with the United States, or the authorization of a contract with the United States except in the name of the State of Texas by the attorney general on his own motion or on the motion of any party affected on good cause shown.

(c) The attorney general may not file or prosecute such a suit unless it is based on allegations of fraud disclosed or found after the final judgment in the validation suit was rendered.

Acts 1971, 62nd Leg., p. 342, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.430. CERTIFIED COPY OF DECREE. (a) After the judgment of the district court is entered, the clerk of the court shall make a certified copy of the decree which shall be filed with the comptroller. The comptroller shall record the decree in the book kept for that purpose.

(b) The certified copy of the decree or a certified copy of the comptroller's record of the decree shall be received in evidence in any suit which may affect the validity of the organization of the district or the validity of the bonds or the contract and shall be conclusive evidence of validity.

Acts 1971, 62nd Leg., p. 342, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.431. REGISTRATION OF BONDS AND DECREE. On the presentation of the bonds together with a certified copy of the decree of the court, the comptroller shall register the bonds in a book kept for that purpose. The comptroller shall attach to each bond a certificate stating that the court's decree has been filed and recorded in his office and shall sign the certificate and attach his official seal.

Acts 1971, 62nd Leg., p. 342, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.432. SALE OF BONDS. (a) After the bonds are issued by the district, the board shall sell the bonds on the best terms and for the best price possible.

(b) The board shall pay the proceeds from the sale of the bonds to the district depository.

(c) The district may exchange bonds for property acquired by purchase or to pay the contract price of work done for the use and benefit of the district.

Acts 1971, 62nd Leg., p. 342, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.433. TAX LEVY. (a) At the time bonds are voted, the board shall levy a tax on all property inside the district in a

sufficient amount to redeem and discharge the bonds at maturity.

(b) The board annually shall levy or have assessed and collected taxes on all property inside the district in a sufficient amount to pay for the expenses of assessing and collecting the taxes.

(c) If a contract is made with the United States, the board annually shall levy taxes on property inside the district in a sufficient amount to pay installments and interest as they become due.

(d) The board may issue the bonds in serial form or payable in installments, and the tax levy shall be sufficient if it provides an amount sufficient to pay the interest on the bonds, the proportionate amount of the principal of the next maturing bonds, and the expenses of assessing and collecting the taxes for that year.

Acts 1971, 62nd Leg., p. 342, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.436. INTEREST AND SINKING FUND. (a) The district shall have an interest and sinking fund which shall include all taxes collected under this chapter.

(b) Money in the interest and sinking fund may be used only:

(1) to pay principal and interest on the bonds;

(2) to defray the expenses of assessing and collecting the taxes; and

(3) to pay principal and interest due under a contract with the United States if bonds have not been deposited with the United States.

(c) Money in the fund shall be paid out of the fund on warrants by order of the board as provided in this chapter.

(d) The depository shall receive and cancel each interest coupon and bond as it is paid and shall deliver it to the board to be recorded, cancelled, and destroyed.

Acts 1971, 62nd Leg., p. 343, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.437. INVESTMENT OF SINKING FUND. (a) The board may invest any portion of the sinking fund of the district in bonds of the United States, the state, any county or city in the state, any irrigation or water improvement district, school district, or other tax bonds issued under the laws of the state.

(b) The funds may be invested if the bonds to be paid with them do not mature within three years from the time the investment is made and if it is necessary to preserve the best interest of the district.

Acts 1971, 62nd Leg., p. 343, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.438. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds, notes, or other obligations including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 40 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of this state.

(c) Refunding bonds may be made payable from the same source as the bonds, notes, or other obligations being refunded or from other additional sources.

(d) The refunding bonds must be approved by the attorney general in the manner provided by law for other bonds of the district and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that the refunding bonds will be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount which, when added to the earnings and profits from the investment of such amount, is sufficient to pay the interest on and principal of the bonds being refunded to their maturity dates, or to their option dates if the bonds have been duly called for payment prior to maturity according to their terms, shall be deposited in the place or places at which the bonds being refunded are payable.

(f) The comptroller shall register refunding bonds without the surrender and cancellation of bonds being refunded.

(g) A refunding may be accomplished in one or in several installment deliveries.

(h) Refunding bonds are investment securities under Chapter 8, Business & Commerce Code.

(i) In lieu of the method provided by this section, a district may refund bonds, notes, or other obligations as provided by the

general law of the state.

Acts 1971, 62nd Leg., p. 344, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1985, 69th Leg., ch. 215, Sec. 1, eff. Sept. 1, 1985.

Sec. 51.439. LIMITATION OF AUTHORITY TO INCUR DEBT AND ISSUE BONDS. (a) For the benefit of purchasers or holders of bonds to be issued or sold, the board of a district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, may limit the authority of the district to incur debt or issue bonds.

(b) The board shall limit the authority by adopting a resolution which states that during a period of not more than 15 years the district will not issue bonds in an amount of more than 25 percent of the assessed value of taxable real property in the district according to the last assessment for district purposes or in an amount of more than a fixed sum or for certain named purposes.

(c) The board shall publish notice of the adoption of the resolution once a week for two consecutive weeks in a newspaper with general circulation in the district. The notice shall state that the resolution will take effect unless a petition against the proposed limitation signed by 20 percent of the electors of the district is presented within 20 days after the first publication of the notice.

(d) If a petition is filed against the limitation, the resolution will not take effect until it is approved at an election held in the district.

(e) The ballots for the election shall be printed to provide for voting for or against: "The limitation during the term of _____ years of the maximum debt of the district to _____." (The blank spaces shall be filled with the purpose of the election.)

(f) If the limitation is approved at an election or if no petition is filed against the resolution, the district may not issue bonds under any statute or constitutional provision in excess of the limitation during the designated term of years except to complete and make repairs to improvements whose cost will be within the debt limitation.

Acts 1971, 62nd Leg., p. 344, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.440. ISSUING BONDS IN EXCESS OF LIMITATION. (a) A

district may issue bonds in excess of a limitation made under Section 51.439 of this code only after the commission has approved the plans and specifications with the estimate of costs.

(b) If the plans, specifications, and estimate are approved, notice of the intention to issue the bonds shall be published once a week for three consecutive weeks in a newspaper with general circulation in the district. The notice shall include a statement of the purpose for issuing the bonds, the amount of the proposed bond issue, and the time the hearing is to be held, which may not be less than 30 days after the notice is first published.

(c) The board shall hold the hearing and any taxpayer, bondholder, or other interested person may appear and be heard.

(d) If the board approves the issuance of the additional bonds in the amount and for the purpose stated in the notice, the question of issuing the bonds shall be submitted to the electors of the district at an election.

Acts 1971, 62nd Leg., p. 344, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.441. MODIFICATIONS OF IMPROVEMENTS. (a) After bonds are issued or a contract is entered into with the United States, the board may give notice of an election to be held to authorize the issuance of additional bonds or a further contract with the United States.

(b) Additional bonds may be issued or a supplemental contract made if the board considers it necessary to:

(1) make modifications in the district or its improvements;

(2) construct further or additional improvements and issue additional bonds on the report of the engineer;

(3) make a supplemental contract with the United States;

(4) make, on its own motion, additional improvements or purchase additional property to accomplish the purposes of the district and to serve the best interest of the district.

(c) The board shall enter its findings in the minutes.

(d) The election shall be held and the returns made in the manner provided in this chapter for the original election.

(e) If the result of the election favors the issuance of the bonds or the supplemental contract with the United States, the board may order the bonds issued or the contract made with the United

States in the manner provided in this chapter.

(f) If a supplemental contract is made with the United States and bonds are not to be deposited with the United States, it is not necessary to issue bonds. If the district is required to raise money in addition to the amount of the contract, the bonds shall be issued only in the additional amount needed.

Acts 1971, 62nd Leg., p. 345, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.442. ISSUANCE OF ADDITIONAL BONDS OR CREATION OF ADDITIONAL INDEBTEDNESS UNDER CERTAIN CONDITIONS. (a) A district may issue additional bonds or create additional indebtedness:

(1) if works, improvements, and facilities constructed under a plan provided in Section 51.410 or 51.422 of this code are inadequate to accomplish the beneficial results which the district's location and conditions demand;

(2) if it is considered necessary to make repairs, replacements, or additions to the district's improvements which cost more than $25,000; or

(3) if additional money is needed to complete the improvements as planned.

(b) The district shall provide the additional money for the particular purpose in accordance with the provisions of this chapter regulating the creation of bond obligations subject to every limitation with respect to the original proceedings and the substantial protection of the substantive rights of holders of any of the district's outstanding obligations.

Acts 1971, 62nd Leg., p. 345, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.443. INTERIM BONDS. After bonds, other than preliminary bonds or notes, are voted by a district, the board may declare an existing emergency with relation to money being unavailable to pay for engineering work, purchase of land, rights-of-way, construction sites, construction work, and legal and other necessary expenses and may issue interim bonds on the faith and credit of the district in the manner provided in Sections 51.444-51.449 of this code to pay these expenses.

Acts 1971, 62nd Leg., p. 346, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.444. LIMITATIONS ON INTERIM BONDS. (a) Interim bonds shall mature not later than 10 years from the date they are issued and shall be redeemable at any time before they mature, as provided in this subchapter.

(b) The principal amount of the interim bonds may not be more than 25 percent of the principal amount of the district's bonds which have been voted but not sold.

(c) Before the issuance of the interim bonds, the board, by resolution, may limit the issue to any amount less than 25 percent, and after the amount is determined and fixed by the resolution, no additional interim bonds may be issued and sold until all outstanding interim bonds are paid.

Acts 1971, 62nd Leg., p. 346, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.445. ISSUANCE OF BONDS AND LEVY OF TAX. (a) After bonds other than preliminary bonds are voted, the board may authorize the issuance of the bonds in whole or in part as they are needed by the district.

(b) The board shall levy and annually assess and collect sufficient taxes to pay principal and interest on the bonds.

(c) The bonds may be approved by the attorney general and registered by the comptroller before the filing of the report of the commission under Section 51.421 of this code.

Acts 1971, 62nd Leg., p. 346, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 981, ch. 367, Sec. 19, eff. June 10, 1981.

Sec. 51.446. DEPOSIT OF BONDS TO SECURE INTERIM BONDS. (a) As the interim bonds are issued and sold, the board, by order, shall deposit bonds of the district which have been validated by a court or approved by the attorney general and registered by the comptroller as provided in Section 51.417 of this code in the district depository.

(b) The bonds deposited shall be credited to the interest and sinking fund account created to pay the interim bonds.

(c) The principal amount of the bonds deposited shall total at least 110 percent of the principal sum of the series of interim bonds which the bonds are deposited to secure.

(d) The interest rate on the interim bonds may not be more than the interest rate on the bonds deposited to secure them.

Acts 1971, 62nd Leg., p. 346, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.447. PROCEDURE FOR ISSUANCE AND SALE OF INTERIM BONDS. (a) Interim bonds shall be issued in the name of the district, signed by the president, and attested by the secretary, with the district seal attached to each bond.

(b) The interim bonds may be issued in the denominations determined by the board and shall be approved by the attorney general and registered by the comptroller in the same manner as provided in Section 51.417 of this code.

(c) Interim bonds may be sold in the same manner and on the same terms provided by law for the sale of other bonds of the district.

(d) If interim bonds are sold at less than par value and accrued interest, the improvement bonds issued by the district must be sold at an increase over the price authorized by law in an amount sufficient to equal the discount allowed on the interim bonds.

Acts 1971, 62nd Leg., p. 346, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.448. PAYMENT OF INTERIM BONDS. (a) The board shall appropriate the tax levied to pay the bonds deposited to the credit of the interest and sinking fund to pay the interim bonds or as much of that tax as necessary to secure the loan evidenced by the interim bonds.

(b) The proceeds of the tax shall be devoted exclusively to the payment of the principal and interest on the interim bonds.

(c) None of the provisions of this subchapter relating to interim bonds shall be construed as prohibiting the sale of bonds deposited to the credit of the interest and sinking fund to pay interim bonds or of any other bonds of the district, but if any of these bonds are sold, the district depository shall apply the proceeds to the payment of principal and accrued interest on the

interim bonds and the remainder to the purposes for which the bonds were authorized.

(d) If none of the bonds are sold at the time an installment on the principal and interest of interim bonds matures, the depository shall cancel the deposited bonds and attached interest coupons in an amount equal to the principal and interest of the interim bonds paid off and discharged.

Acts 1971, 62nd Leg., p. 347, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.449. REDEMPTION OF INTERIM BONDS. (a) At the option of the board, interim bonds may be redeemed at any time or times before maturity on payment by the district of the principal and accrued interest to the date fixed for redemption by the board.

(b) When interim bonds are called for redemption before maturity, the secretary shall give written notice of the redemption to the bank or banking house named as the place of payment in the bonds or to its successor or assign.

(c) In the notice, the secretary shall designate the bond or bonds called for redemption and payment and shall state number or numbers of the bonds.

(d) The notice shall include the redemption date which shall not be more than 60 days after the date notice of call for payment is made.

(e) If any of the bonds which are called for redemption are not presented, they shall cease to bear interest from and after the date fixed for redemption.

Acts 1971, 62nd Leg., p. 347, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.450. ALTERNATE METHODS FOR PAYING BONDS. (a) As used in this section and in Sections 51.450-51.454 of this code, "net revenue" means income or increment which may come from ownership and operation of the improvements which are encumbered less the proportion of the district's revenue income reasonably required to provide for administration, efficient operation, and adequate maintenance of the district's services and facilities which are encumbered. Net revenue does not include money derived from taxation.

(b) A district which expects net revenue from operations may secure its bonds in any one of the following:

(1) as provided in Section 51.433 of this code;

(2) by entering into a contract to pledge the net revenue of the district and to mortgage and encumber part or all of the property and facilities, franchise, revenue and income from operations, and everything acquired or to be acquired by the district; or

(3) as provided in both Subdivisions (1) and (2) of this subsection.

Acts 1971, 62nd Leg., p. 347, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.451. TAXES TO SECURE CERTAIN BONDS. (a) If bonds are secured as provided in Section 51.450(b)(3) of this code, at the time that net revenue together with money derived from taxes accumulates a surplus in the sinking fund equal to the amount required in the succeeding year to liquidate the interest and principal on the district's bonds maturing in that year, the district's annual tax levies may be lowered to produce not less than 25 percent of the bond maturities for the succeeding year.

(b) If three successive years demonstrate that this net revenue is adequate to protect the district's bonds as they mature, the district's tax may be discontinued until further experience demonstrates the necessity to continue the tax to avoid default in the payment of the district's bonds as they mature.

Acts 1971, 62nd Leg., p. 348, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.452. ELECTION. (a) If the district proposes to issue bonds which will be secured under either Section 51.450(b)(2) or 51.450(b)(3) of this code, the proposition shall be presented at an election held under Section 51.413 of this code.

(b) The ballots for the election shall be printed to provide for voting for or against one of the following propositions:

(1) "The issuance of bonds and the pledge of net revenue for the payment of the bonds.";

(2) "The issuance of bonds, the pledge of net revenue, and the creation of a lien on physical property to secure payment of the

bonds."; or

(3) "The issuance of bonds, the pledge of net revenue, and the levy of adequate taxes to pay the bonds."

Acts 1971, 62nd Leg., p. 348, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.453. HEARING AND ELECTION ON CERTAIN BONDS. (a) A district which plans to issue bonds payable from and secured by a pledge of net revenue and a lien on the physical property, either or both, without the levy of taxes, is not required to hold a hearing to exclude land or adopt a plan of taxation.

(b) The proposition for issuance of bonds may be submitted at the election held to confirm the creation of the district or at an election called by the board.

Acts 1971, 62nd Leg., p. 348, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.454. HEARING BEFORE ISSUING CERTAIN BONDS. If a district issues its original bonds under Section 51.450(b)(2) of this code and later desires to issue bonds payable in whole or in part from taxes or to levy a tax for maintenance purposes, the district shall hold a hearing to exclude land, and at the time provided by law, shall hold another hearing to adopt a plan of taxation. These hearings shall be held before an election is called to approve the issuance of tax-supported bonds or the levy of a maintenance tax.

Acts 1971, 62nd Leg., p. 349, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.455. ISSUANCE OF REVENUE BONDS TO CONSTRUCT EXTENSIONS AND IMPROVEMENTS TO CERTAIN SYSTEMS. (a) A district which has adopted a plan for improvements designed to furnish a water and sewer system may also issue its revenue bonds as provided in Section 51.450(b)(2) of this code to construct extensions and improvements to the water and sewer system or to an irrigation system.

(b) The district may pay the revenue bonds by entering into contracts to pledge the net revenue derived from the sale of water for irrigation purposes and service charges obtained from the sale and distribution of water for irrigation purposes.

(c) The bonds may be issued in one or more issues under the terms and conditions considered by the board to be advisable.

Acts 1971, 62nd Leg., p. 349, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER L. TAX PLAN

Sec. 51.501. TAX TO PAY PRELIMINARY BONDS. Taxes to pay principal and interest on preliminary bonds shall be levied and collected on the ad valorem basis.

Acts 1971, 62nd Leg., p. 349, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.502. HEARING TO DETERMINE BASIS OF TAXATION. After the board adopts plans for construction of a plant and improvements to accomplish the purposes of the district and after an election is held to authorize the issuance of construction bonds and the levy of a tax to pay for the bonds, the board shall hold a public hearing to determine whether the taxes to pay the construction bonds and maintenance, operation, and administrative costs of the district shall be levied, assessed, and collected on:

(1) the ad valorem basis;

(2) the basis of assessment of specific benefits;

(3) the basis of assessment of benefits on an equal sum per acre; or

(4) the ad valorem basis for part of the total tax or defined area or property and on the benefit basis for the other part of the tax or defined area or property.

Acts 1971, 62nd Leg., p. 349, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.503. NOTICE OF HEARING. Notice of the time and place of the hearing and the proposition to be determined shall be published once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall be made not less than 10 days before the day of the hearing set in the notice.

Acts 1971, 62nd Leg., p. 349, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.504. CONDUCT OF HEARING. (a) At the hearing, any person who is a taxpayer in the district may appear and offer testimony to show which plan of taxation will be most conducive to equitable distribution of taxes.

(b) The hearing may be adjourned from day to day until all persons wishing to testify have been heard.

Acts 1971, 62nd Leg., p. 350, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.505. ORDER. (a) The board shall adopt the plan of taxation which will, in its judgment under the evidence, be most conducive to the equitable distribution of the district's tax.

(b) If the plan adopted by the board is made under the provisions of Section 51.512 of this code, the order shall specify the proportion of the tax which falls under each designated classification.

(c) The order of the board is final and cannot be reviewed or questioned in any court except on the ground of fraud or palpable and arbitrary abuse of discretion.

Acts 1971, 62nd Leg., p. 350, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.506. CHANGE TAX PLAN. If after a tax plan is adopted the directors find that the best interest of the district and the necessity to maintain adequately and equitably the district's tax requires a change in the tax plan, the board may give notice, hold a hearing, and determine a new plan in the manner provided in Sections 51.502-51.505 of this code.

Acts 1971, 62nd Leg., p. 350, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.507. EFFECT OF SECTIONS 51.501-51.506 OF CODE. Nothing in Sections 51.501-51.506 of this code shall be held to alter provisions of this chapter relating to districts which have contracts with the United States or to alter or impair the provisions of this code relating to taxes levied to provide local improvements to a

defined area which do not affect the entire district.

Acts 1971, 62nd Leg., p. 350, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.508. UNLIMITED AUTHORITY TO COLLECT SERVICE CHARGES AND TAXES. The provisions of this subchapter do not alter or impair the right of a district to make, establish, and collect maintenance and operation charges for service rendered; to levy and collect taxes to secure funds to maintain, repair, and operate all works and facilities; and to give and maintain proper service for the purposes of its organization.

Acts 1971, 62nd Leg., p. 350, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.509. LIEN CREATED; NO LIMITATION. Charges or assessments imposed by a district for maintenance and operation of works, facilities, and services of the district shall constitute a lien against the land to which the charges or assessments have been established. No law providing limitation against actions for debt shall apply.

Acts 1971, 62nd Leg., p. 351, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 51.510. PURPOSE OF SECTIONS 51.511-51.530 OF CODE. The purpose of Sections 51.511-51.530 of this code is to give a district the flexibility of taxing power which will permit and cause the tax of the district to be equitably distributed and which will give the highest practicable degree of service under the peculiar physical and economic conditions of the district. To this end, these sections shall be liberally and sympathetically construed.

Acts 1971, 62nd Leg., p. 351, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.511. AUTHORITY TO ADOPT ALTERNATIVE PLANS OF TAXATION. A district operating under the provisions of Article XVI, Section 59,

of the Texas Constitution, shall adopt a tax plan under the alternative provisions of Sections 51.512-51.530 of this code either at the time of its creation or before the appointment of commissioners of appraisement under this chapter.

Acts 1971, 62nd Leg., p. 351, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.512. ALTERNATIVE PLANS OF TAXATION. (a) The district's taxes for all purposes, except to pay the cost of preliminary surveys, may be levied, assessed, and collected on an adopted basis to be chosen from the alternatives provided in this section.

(b) The district's tax plan may be based on any one of the following:

(1) ad valorem basis;

(2) benefit basis;

(3) ad valorem basis to obtain a part or percentage of the total tax or to apply to a specific part of the district and benefit basis applied to the other part of percentage of the tax or to the remaining part of the district; or

(4) either ad valorem or benefit basis on designated property or defined areas of the district to pay for improvements, facilities, or service peculiar to the defined part of the district and not generally and directly benefiting the district as a whole.

Acts 1971, 62nd Leg., p. 351, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.513. ADOPTION OF PLAN OF TAXATION. (a) Except as provided in Section 51.512(b)(4) of this code, before the commission of appraisement is appointed and the construction bonds are sold, the board shall adopt a proposed plan of taxation as provided in Sections 51.502-51.505 of this code.

(b) If the tax plan is not based wholly on the ad valorem basis or on the benefit basis, the order adopting the proposed plan shall specify the portion of the tax to be based on the ad valorem basis and the portion to be based on the benefit basis. The board also shall state the physical and economic reasons, the peculiar diverse local needs, or the comparative potential benefits of different areas of designated property in the district which make it necessary or

equitable to levy all or part of the tax on a defined part of the district on the ad valorem or benefit basis.

Acts 1971, 62nd Leg., p. 351, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.514. NOTICE OF ADOPTION OF PLAN AND HEARING. (a) After the tax plan is adopted, the board shall publish notice once a week for two consecutive weeks in one or more newspapers with general circulation in the county or counties in which the district is located.

(b) The notice shall state:

(1) that the tax plan has been adopted;

(2) that the plan is available for public inspection in the district's office;

(3) that a hearing on the plan will be held by the board at a specified place and at a particular time, which shall not be less than 15 days nor more than 20 days after the first publication of notice; and

(4) that all interested persons may appear and support or oppose all or part of the proposed tax plan and offer testimony.

Acts 1971, 62nd Leg., p. 352, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.515. ORDER ADOPTING TAX PLAN. (a) After all persons have been heard, the board may approve the proposed tax plan or may change or modify the plan.

(b) The board shall adopt a tax plan which it considers, under the evidence before it, most equitably distributes the tax burden and conserves the public welfare.

(c) The board shall enter its order establishing the tax plan, and the plan shall become the basis for the assessment and collection of taxes until the district adopts a different plan.

(d) The order is not subject to judicial review except on the ground of fraud, palpable error, or arbitrary and confiscatory abuse of discretion.

(e) A new plan may be adopted if required to preserve equity of distribution in the manner provided for adopting the original plan; however, no change may be made in the tax plan which will impair the ability of the district promptly to meet all outstanding obligations

of the district within the intent of Sections 51.434 and 51.437 of this code.

Acts 1971, 62nd Leg., p. 352, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.516. OBTAINING FUNDS TO CONSTRUCT, ADMINISTER, MAINTAIN, AND OPERATE IMPROVEMENTS AND FACILITIES IN DEFINED PART OF DISTRICT. On adoption of the plan of taxation provided in Section 51.512(b)(4) of this code, the district, under the limitations of this subchapter, may apply separately, differentially, equitably, and specifically its taxing power and lien to a defined area or designated property to provide money to construct, administer, maintain, and operate improvements and facilities peculiar to the defined area or the designated property.

Acts 1971, 62nd Leg., p. 352, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.517. ADOPTION OF TAX PLAN FOR ONLY PART OF DISTRICT. If a district adopts the tax plan and assumes the powers in Section 51.512(b)(4) of this code, or if required to conserve and protect the public welfare, the district, in the manner provided in Sections 51.518-51.524 of this code, may provide, pay for, maintain, and operate improvements, service, or facilities peculiar to a designated area or defined property which do not affect the whole district.

Acts 1971, 62nd Leg., p. 352, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.518. DEFINING AREA AND DESIGNATING PROPERTY TO BE BENEFITED BY IMPROVEMENTS; ADOPTING TAX PLAN. (a) The board shall define the particular area to be taxed by metes and bounds or designate the property to be served, affected, and taxed.

(b) The board shall adopt a plan for improvements in the defined area or to serve the designated property in the manner provided in Sections 51.410-51.411 of this code.

(c) The board shall adopt a plan of taxation to apply to the defined area or designated property which may or may not be in addition to other taxes imposed by the district on the same area or property. The proportional tax or income contributions of the

defined area or designated property and the proportional and equitable interest of the entire district shall be taken into consideration in imposing any tax to an area or piece of property.

Acts 1971, 62nd Leg., p. 353, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.519. NOTICE AND HEARING. The board shall give notice and hold a hearing in the same manner and for the same purpose as provided in Sections 51.514-51.515 of this code.

Acts 1971, 62nd Leg., p. 353, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.520. BOARD'S ORDER. At the hearing, if the board decides to define and serve the proposed separate tax area or separate designated property, it shall enter an order in the record, and if the proposal involves the issuance of bonds, the board shall call an election in the whole district.

Acts 1971, 62nd Leg., p. 353, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.521. PROCEDURE FOR ELECTION. (a) The election shall conform to the provisions of this code relating to an election to authorize the issuance of construction bonds.

(b) The board shall submit the appropriate issues to the electors, and the issues may be submitted on the same ballot to be used in another election.

(c) The notice of election shall define the area to be designated and the plan of taxation to be applied.

Acts 1971, 62nd Leg., p. 353, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.522. ELECTION NOT REQUIRED IN SEPARATE ELECTION PRECINCT. If proposed improvements are considered to be required to promote the public welfare or if the owners of the land in a defined area file a petition acknowledged as required for deeds requesting the district to provide improvements and assess a tax only in the defined area, it is not necessary to constitute the area a separate

election precinct and have a separate election in that area.

Acts 1971, 62nd Leg., p. 353, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.523. BALLOTS. The ballot for an election under this subchapter shall be printed to provide for voting for or against substantially the proposition: "Designation of the area, issuance of bonds, levy of a tax to retire the bonds, and levy of a maintenance tax."

Acts 1971, 62nd Leg., p. 353, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 26, eff. September 1, 2013.

Sec. 51.524. DECLARING RESULT AND ISSUING ORDER. If a majority of the electors approve the proposal, the board shall declare the result and, by order, shall establish the area and define it by metes and bounds or designate the specific property and shall fix the tax basis for the area or property. A certified copy of the order shall be recorded in the minutes of the district and shall constitute notice.

Acts 1971, 62nd Leg., p. 354, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.525. PLEDGE OF FAITH AND CREDIT. If at an election the electors approve the issuance of bonds and the levy of a tax which applies only to a defined area, the district may issue bonds which pledge only the faith and credit based on the property values in the defined area; however, the district may pledge the full faith and credit of the entire district under the condition of authorization in Section 51.529 of this code.

Acts 1971, 62nd Leg., p. 354, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.526. ELECTION IN SEPARATE ELECTION PRECINCT. (a) If the improvements to be provided in a defined area are considered

peculiarly for the benefit of that area and not required to conserve the public or general welfare in the district as a whole, and if the proposed improvements in that area will require the imposition of a tax only on the property in the area, the defined area is constituted a separate election precinct in which a separate election shall be held to determine if the improvements will be provided and a separate tax levied.

(b) The election shall be held in the manner provided for issuance of bonds under this subchapter.

(c) If a majority of the electors in the defined area approve the propositions, the district shall provide money when necessary and shall provide the improvements and levy the tax.

(d) At an election in the defined area, each qualified elector of the district who owns property in the defined area may elect to vote in the area and not in the precinct of his residence.

Acts 1971, 62nd Leg., p. 354, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.527. ISSUANCE OF BONDS AND LEVY OF TAX FOR DEFINED AREA OR DESIGNATED PROPERTY. (a) After the order is recorded, the district may issue its bonds to provide the specific plant, works, and facilities included in the plans adopted for the area or to serve the property and shall provide the plant, works, and facilities.

(b) In the appropriate case, the board shall levy, assess, and collect taxes on the property located in the defined area or on the designated property in conformity with the adopted tax plan.

(c) After bonds issued for the defined area or designated property are fully paid or defeased, the board may declare the defined area dissolved or may repeal the designation of the designated property. After that declaration or repeal, the board shall cease imposing any special taxes authorized under the adopted tax plan on the property located in the defined area or on the designated property.

Acts 1971, 62nd Leg., p. 354, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 27, eff. September 1, 2013.

Sec. 51.528. CONTRACT TO PROVIDE IMPROVEMENTS, FACILITIES, AND SERVICES TO DESIGNATED PROPERTY OR AREA. (a) Property or areas inside or outside the district may, by contract, be designated to obtain improvements, facilities, or service for the designated area or property.

(b) The designation shall be based on a written petition in conformity with the laws authorizing contracts by a petitioner or person owning, controlling, or governing the property or area to be designated.

(c) The board may make the designation in a contract to provide, administer, maintain, and operate the desired improvements, facilities, or service for the designated area or property, and the designated area or property shall be subject to being made the basis of the bonds and may be subject to a tax lien in amount to retire the obligations incurred by the district to provide the facilities, improvements, or service and to cover the expenses necessary to administer, maintain, and operate the improvements and facilities under the contract.

(d) The contract may not violate the law of this state or the United States and may not result in impairing a vested right or causing the district to fail to serve fully and permanently water demands in the district in the order of preference of uses.

(e) The contract may provide that one governing body may establish the contractual and statutory tax lien in behalf of the district and may levy, assess and collect the tax for and on behalf of the district.

(f) The district may not issue bonds pledging the full faith and credit of the district under this section or under Section 51.517 of this code without submitting the proposition to the electors of the whole district under the provisions of this subchapter or under the provisions authorizing the issuance of construction bonds.

Acts 1971, 62nd Leg., p. 354, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.529. AUTHORITY OF DISTRICT. (a) If a majority of the electors in the whole district approve the proposal, the district may issue its bonds to provide the plant, improvements, and facilities peculiar to the defined area or designated property or peculiar to a contract for service and may pledge the full faith and credit of the

district to pay for the bonds.

(b) The district shall have a lien on the property in the defined area or on the designated property and may levy, assess, and collect or have levied, assessed, and collected taxes in the area or on the property to protect the district from or to compensate any liability incurred on behalf of the defined area or designated property.

Acts 1971, 62nd Leg., p. 355, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.530. ADMINISTRATIVE AUTHORITY OF BOARD. The board shall administer all business incident to the creation and operation of a defined area or service to designated property unless otherwise provided by contract.

Acts 1971, 62nd Leg., p. 355, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.531. MASTER DISTRICT; TAXING AUTHORITY. A master district may levy and collect taxes, equitably distributed, which shall be in addition to other taxes which may be levied by the several districts constituting the master district.

Acts 1971, 62nd Leg., p. 355, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.532. TAXES IN DISTRICTS CONSISTING OF A CITY, TOWN OR MUNICIPAL CORPORATION. If a city, town, or municipal corporation is constituted a district operating under this chapter, taxes levied in the district may be assessed and collected in the manner provided in Sections 51.533-51.538 of this code.

Acts 1971, 62nd Leg., p. 355, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.533. ORDER FIXING RATE OF TAXATION. (a) The board shall issue an order fixing the rate of taxation and levying a tax. The order shall be signed by the president and secretary of the district, and the district seal shall be attached.

(b) The board shall enter the order in their minutes and file a

copy of the order with the secretary of the city, town, or municipal corporation.

(c) The secretary of the city, town, or municipal corporation shall record the order in a book kept in his office for that purpose and shall make and deliver a copy of the order to the assessor and collector of the city, town, or municipal corporation.

Acts 1971, 62nd Leg., p. 356, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.534. ADDITION OF LAND TO DEFINED AREA. The procedures of Section 49.301 may be used to add land to a defined area created under this subchapter. The land must be included in the district but is not required to be contiguous to the defined area. Notwithstanding any law to the contrary, the procedures of Section 49.301 shall apply to districts operating under Chapter 49.

Added by Acts 1997, 75th Leg., ch. 1010 Sec. 4.46, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 230, Sec. 1, eff. Aug. 30, 1999.

Sec. 51.535. PROVISIONS OF CHAPTER INAPPLICABLE TO DISTRICT. If taxes are levied, assessed, and collected under Sections 51.533-51.538 of this code, the provisions of this chapter relating to assessment and collection of taxes do not apply to the district and it is not necessary for the district to appoint an assessor and collector.

Acts 1971, 62nd Leg., p. 356, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.536. COMPENSATION OF CITY ASSESSOR AND COLLECTOR. The board shall pay to the city assessor and collector and other city officers reasonable compensation for the services performed by them for the district. The amount of compensation shall be fixed in advance of the performance of the duties.

Acts 1971, 62nd Leg., p. 356, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.537. MUNICIPALITY'S AUTHORITY REGARDING DEFINED AREA. (a) This section applies only to a municipality any portion of which is located in a county with a population of more than 1 million and less than 1.5 million.

(b) A municipality may not annex a part of a defined area in a district that has adopted a plan for the defined area under this subchapter unless:

(1) 90 percent or more of all facilities and infrastructure described by the plan has been installed and completed; and

(2) the municipality:

(A) annexes all of the defined area that is within the municipality's extraterritorial jurisdiction; and

(B) assumes the pro rata share of the bonded indebtedness of the annexed area.

(c) After the annexation occurs:

(1) the annexed area is not eligible to be a defined area under this subchapter; and

(2) the district may not impose in the annexed area a tax authorized for a defined area under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 962 (H.B. 1644), Sec. 3, eff. June 18, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 182, eff. September 1, 2011.

Sec. 51.538. ELECTION REQUIRED. Taxes levied, bonds issued, and indebtedness incurred by a district operating under Sections 51.533-51.538 of this code are subject to the provisions of the constitution and this chapter which require an election to authorize tax levies, bonds, and indebtedness.

Acts 1971, 62nd Leg., p. 356, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER M. TAXATION ON THE AD VALOREM BASIS

Sec. 51.561. ASSESSMENT AND COLLECTION OF DISTRICT TAXES. The assessor and collector shall assess and collect taxes for the district.

Acts 1971, 62nd Leg., p. 357, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 51.591. ATTORNEY TO FILE SUITS TO COLLECT DELINQUENT TAXES. (a) The board shall on or before April 1 of each year employ an attorney to file suits to collect all delinquent taxes.

(b) The attorney is entitled to receive a fee of 10 percent of the amount of all delinquent taxes collected or paid after suits are filed. The fees shall be charged as court costs.

Acts 1971, 62nd Leg., p. 362, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER N. TAXATION ON THE BENEFIT BASIS

Sec. 51.631. METHOD OF TAXATION FOR DISTRICT UNDER CONTRACT WITH UNITED STATES. A district which is operated under contract with the United States may adopt the plan to levy and collect taxes on the benefit basis instead of the ad valorem basis and determine taxes under the provisions of Sections 51.632-51.634 of this code.

Acts 1971, 62nd Leg., p. 364, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.632. ASSESSMENT RECORD. When necessary, the board shall apportion and assess the benefits conferred on property in the district and shall make a record showing the amount and value of benefits to accrue on property in the district and the amount of taxes to be levied and collected on the property. No taxes assessed or adjudged against the property may be more than the benefit which accrues to the property from the organization, operation, and maintenance of the district and its improvements.

Acts 1971, 62nd Leg., p. 364, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.633. NOTICE OF TAXES. After the board makes the record, it shall mail to each property owner whose name appears in the record notice of the amount of taxes levied on his property and the date and place at which the property owner may appear and contest

the correctness and equitableness of the tax.

Acts 1971, 62nd Leg., p. 364, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.634. DECISION AFTER HEARING. After the hearing, the board shall determine whether or not the tax is equitable and shall sustain, reduce, or increase the tax to an amount which in the board's judgment is equitable. The decision of the board is final.

Acts 1971, 62nd Leg., p. 365, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.635. METHOD OF TAXATION FOR DISTRICT NOT UNDER CONTRACT WITH THE UNITED STATES. If a district which is not operating under contract with the United States adopts the benefit basis plan for taxation, the levy, assessment, equalization of property values, and collection of taxes shall be made in the manner provided in Sections 51.636-51.648 of this code.

Acts 1971, 62nd Leg., p. 365, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.636. COMMISSIONERS OF APPRAISEMENT. As soon as practicable after the approval of the engineer's report and the adoption of the plan for improvements to be constructed, the board shall appoint three disinterested commissioners of appraisement. The commissioners shall be freeholders but not owners of land within the district which they represent.

Acts 1971, 62nd Leg., p. 365, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.637. COMPENSATION OF COMMISSIONERS. On approval by the board, each commissioner is entitled to receive $10 a day for each day he actually serves, plus all necessary expenses.

Acts 1971, 62nd Leg., p. 365, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.638. NOTICE OF APPOINTMENT AND MEETING. Immediately

after the commissioners of appraisement are appointed, the secretary of the board shall give written notice to each appointee of his appointment and of the time and place of the first meeting of the commissioners.

Acts 1971, 62nd Leg., p. 365, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.639. FIRST MEETING OF COMMISSIONERS. (a) The commissioners shall meet at the time specified in the notice from the secretary or as soon after that time as possible.

(b) At the meeting the commissioners shall take and subscribe an oath to discharge faithfully and impartially their duties as commissioners and make a true report of the work which they perform. They shall then organize by electing one commissioner as chairman and one commissioner as vice chairman.

(c) The secretary of the board or, in his absence, a person appointed by the board shall serve as secretary to the commissioners of appraisement and shall furnish to the commissioners any information and assistance which is necessary for the commissioners to perform their duties.

Acts 1971, 62nd Leg., p. 365, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.640. ASSISTANCE FOR COMMISSIONERS. Within 30 days after the commissioners qualify and organize, they shall begin to perform their duties, and in the exercise of their duties they may obtain legal advice and information relative to their duties from the district's attorney and, if necessary, may require the presence of the district engineer or one of his assistants at any time and for as long as necessary to properly perform their duties.

Acts 1971, 62nd Leg., p. 365, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.641. VIEWING LAND AND OTHER PROPERTY AND IMPROVEMENTS IN DISTRICT. The commissioners shall view the land in the district which will be affected by the district's reclamation plans and the public roads, railroads, rights-of-way, and other property and improvements located in the district and shall assess the amount of

the benefits and damages that will accrue to the land, roads, railroads, rights-of-way or other property or improvements in the district from the construction of the improvements.

Acts 1971, 62nd Leg., p. 366, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.642. COMMISSIONERS REPORT. (a) The commissioners shall prepare a report and file it with the secretary of the board. The report shall be signed by at least a majority of the commissioners.

(b) The report shall include:

(1) the name of the owner of each tract of land which is subject to assessment;

(2) a description of the property;

(3) the amount of the benefits or damages assessed on each tract of land;

(4) the time and place at which a hearing will be held on the report to hear objections; and

(5) the number of days each commissioner served and the actual expenses incurred during his service as commissioner.

(c) The day set in the report for the hearing may not be later than 20 days after the report is filed.

Acts 1971, 62nd Leg., p. 366, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.643. NOTICE OF HEARING. (a) After the commissioners' report is filed, the secretary of the board shall publish notice of the hearing on the report at least once a week for two consecutive weeks in a newspaper published in each county in which part of the district is located. The secretary shall mail written notice of the hearing to each person whose property will be affected if his address is known.

(b) The notice shall state:

(1) the time and place of the hearing;

(2) that the commissioners' report has been filed;

(3) that interested persons may examine the report and make objections to it; and

(4) that the commissioners will meet at the time and place indicated to hear and act on objections to the report.

(c) On the day of the hearing, the secretary shall file in his office the original notice and his affidavit stating the manner of publication, the names of persons to whom notice was mailed, and the names of persons to whom notice was not mailed because the secretary by reasonable diligence could not ascertain their addresses. Copies of the notice and affidavit also shall be filed with the commissioners of appraisement and the clerk of the commissioners court.

Acts 1971, 62nd Leg., p. 366, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.644. HEARING. (a) At or before the hearing on the commissioners' report, an owner of land that is affected by the report or the reclamation plans may file exceptions to all or part of the report.

(b) At the hearing, the commissioners shall hear and make determinations on the objections submitted and may make necessary changes and modifications in the report for objections which are sustained.

Acts 1971, 62nd Leg., p. 367, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.645. WITNESSES AT THE HEARING. At the hearing, interested parties may appear in person or by attorney and are entitled, on demand, to have the chairman of the commissioners of appraisement issue process for witnesses. The commissioners shall have the same power as a court of record to enforce the attendance of witnesses.

Acts 1971, 62nd Leg., p. 367, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.646. COSTS OF HEARING. The commissioners may adjudge and apportion the costs of the hearing in any manner they consider equitable.

Acts 1971, 62nd Leg., p. 367, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.647. COMMISSIONERS' DECREE. (a) After the commissioners have made a final decision, they shall issue a decree confirming their report insofar as it remains unchanged and shall approve and confirm changes in the report.

(b) The final decree and judgment of the commissioners shall be entered in the minutes of the board, and certified copies shall be filed with the county clerk of each county in which part of the district is located and shall be notice to all persons of the contents and purpose of the decree.

(c) The findings of the commissioners which relate to benefits and damages to land and other property in the district are final and conclusive.

Acts 1971, 62nd Leg., p. 367, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 69, eff. Sept. 1, 1989.

Sec. 51.648. EFFECT OF FINAL JUDGMENT AND DECREE. The final judgment and decree of the commissioners shall form the basis for all taxation in the district. Taxes shall be apportioned and levied on each tract of land and other real property in the district in proportion to the net benefits to the land or other property stated in the final judgment and decree.

Acts 1971, 62nd Leg., p. 367, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.649. FIXING TAX AS EQUAL SUM ON EACH ACRE. At the election at which the plan of taxation is determined or at any other time before the bonds are issued, the voters of any district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, may vote on the proposition of whether or not benefits for tax purposes shall be fixed as an equal sum on each acre of land that is irrigated or to be irrigated by gravity flow from the canal system of the district. The benefit per acre shall be voted on as it is applied to land in the district that can be irrigated by gravity flow from the irrigation system and also the benefit to land in the district that cannot be irrigated by gravity flow.

Acts 1971, 62nd Leg., p. 367, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.650. ELECTION. (a) If the board desires to submit the question of whether or not to adopt the method of assessing benefits provided in Section 51.649 of this code, it shall order an election to be held in the district and shall submit the proposition in the manner provided for other district elections.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "Uniform assessment of benefits of $_____ per acre on all irrigable land in the district, and the assessment of $_____ per acre on all nonirrigable land in the district."

(c) The board shall determine the amounts to fill the spaces in the proposition. The amount of charge per acre may be found by dividing the number of acres of land into the amount of debt to be incurred by the district in providing for irrigation.

(d) If a majority of the persons voting in the election vote in favor of the proposition, it shall be adopted.

Acts 1971, 62nd Leg., p. 368, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.651. EXCLUDING NONIRRIGABLE LAND FROM DISTRICT. If the owner of land which is classed nonirrigable under the uniform acreage valuation objects to the amount of charges fixed against him by the order calling the election or by the result of the election, he may have his nonirrigable land excluded from the district by filing an application for exclusion as provided by law within 10 days after the election is held.

Acts 1971, 62nd Leg., p. 368, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.652. SETTING ANNUAL VALUE OF LAND UNNECESSARY. If the district adopts the uniform acreage valuation for taxation, the valuation shall be applied to all land in the district, and it is not necessary to annually fix the value of the land. It is also unnecessary for the board to appoint a commission to ascertain or fix the value of the improvement to particular land.

Acts 1971, 62nd Leg., p. 368, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 51.653. PREPARING TAX ROLLS. (a) The board shall examine the tax rolls to determine if all property subject to taxation appears on the tax rolls under the proper classification. The board shall add to the tax roll any property which was left off and shall examine, correct, and certify the tax roll.

(b) Any property owner may protest to the board that his property has not been properly classified. The board shall consider the protest and enter its findings in the minutes.

Acts 1971, 62nd Leg., p. 368, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 51.655. LAW GOVERNING ADMINISTRATION OF BENEFIT TAX PLAN. In a district that levies taxes on a benefit basis, the rate of taxation and the assessment and collection of taxes shall be governed by the law relating to ad valorem taxes to the extent applicable.

Acts 1971, 62nd Leg., p. 369, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 51.656. IRRIGATING NONIRRIGABLE LAND. If land which is classed as nonirrigable is later irrigated by the district, before the owner of the land receives the water, he shall pay to the district an amount equal to the entire amount that would have been charged to the owner if the land had been originally classed as irrigable.

Acts 1971, 62nd Leg., p. 369, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.657. TAXATION IN DISTRICT CONSTRUCTING LEVEES OR DRAINAGE SYSTEMS. (a) A district created to construct levees or works and plants to protect from overflow or created to construct

drainage systems may adopt the plan of assessing benefits at an equal sum on each acre of land in the district in the manner provided in Sections 51.650-51.656 of this code.

(b) The proposition included in the election order shall be printed to provide for voting for or against: "Uniform assessment of benefits for _____ purposes."

Acts 1971, 62nd Leg., p. 369, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER O. ADDING AND EXCLUDING TERRITORY AND CONSOLIDATING DISTRICTS

Sec. 51.702. EXCLUSION OF NONAGRICULTURAL AND NONIRRIGABLE LAND FROM THE DISTRICT. After the district is organized, acquires facilities with which to function as an irrigation district, and votes, issues, and sells bonds for the purposes for which the district was organized, land within the district subject to taxation which is not agricultural land or cannot be irrigated in a practicable manner may be excluded from the district by complying with the provisions of Sections 51.703-51.713 of this code.

Acts 1971, 62nd Leg., p. 371, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.703. PREREQUISITE TO APPLICATION FOR EXCLUSION. The owner of land in the district which is not agricultural land or cannot be irrigated in a practicable manner may apply for its exclusion from the district if all taxes levied and assessed by the district on the land to be excluded have been fully paid, including all bond tax and flat water rate assessment.

Acts 1971, 62nd Leg., p. 371, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.704. SUBSTITUTING LAND OF EQUAL ACREAGE AND VALUE. Land which can be irrigated in a practicable manner of at least equal acreage and equal value to the land being excluded must be added to the district simultaneously with the exclusion of the nonagricultural or nonirrigable land.

Acts 1971, 62nd Leg., p. 372, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.705. SECURING APPLICATION TO SUBSTITUTE LAND. The board may require an owner of land in the district who has applied for the exclusion of his nonagricultural or nonirrigable land from the district to procure an application of the owner of land adjoining the boundaries or the canals of the district, and capable of being irrigated in a practicable manner from the facilities of the district, for inclusion in the district of his land in an amount and value at least equal to the land which is to be excluded under the application of the owner of nonagricultural or nonirrigable land. Each application shall set forth the facts concerning the land to be excluded from and the land to be added to the district, including evidence of their reasonable market value.

Acts 1971, 62nd Leg., p. 372, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.706. APPLICATION OF OWNER OF NEW LAND TO BE SUBSTITUTED. The owner of the new land to be added shall submit an application setting forth that the owner of the new land assumes the payment of all taxes to be levied on his land by the district after the date the land is added to the district. The application also shall set forth an agreement by the owner of the new land that the land will be subject to future taxes for bond tax and flat rate and all other assessments levied and assessed by the district as though the land had been incorporated originally in the district. The application also shall contain an agreement by the owner of the new land that the land will be subject to the same liens and provisions as all other land in the district and subject to the statutes governing all other land in the district.

Acts 1971, 62nd Leg., p. 372, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.707. CONSENT OF OUTSTANDING BONDHOLDERS. (a) The board shall communicate the contents of the applications to exclude nonagricultural or nonirrigable land and to include an equal amount of irrigable land to the holders of outstanding bonds voted, issued, sold, and delivered by the district and payable from taxes levied on property in the district.

(b) If the consent in writing of 95 percent or more of the bondholders to the plan is filed with the board, the board may hold a hearing on the applications.

Acts 1971, 62nd Leg., p. 372, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.708. NOTICE OF HEARING ON APPLICATIONS. The board shall give notice of the hearing on the applications by publishing the time, place, and nature of the hearing one time in a newspaper published in a county in which all or part of the district is located. The newspaper must have been published regularly for more than 12 months preceding the date of the publication of the notice and must have circulation in the district. The notice shall be published not less than 10 days nor more than 20 days before the date of the hearing.

Acts 1971, 62nd Leg., p. 372, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.709. HEARING PROCEDURE. The board shall hear all interested parties and all evidence in connection with the applications.

Acts 1971, 62nd Leg., p. 373, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.710. BOARD'S RESOLUTION TO SUBSTITUTE LAND. If the board finds that all the conditions provided for the exclusion of land and inclusion of other land in the district exist, it may adopt and enter in its minutes a resolution to exclude land which is nonagricultural or nonirrigable in a practicable manner and include land which may be irrigated from the facilities of the district in a practicable manner.

Acts 1971, 62nd Leg., p. 373, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.711. LIABILITY OF EXCLUDED AND INCLUDED LAND. The land excluded from the district is free from any lien or liability created on the excluded land by reason of its having been included in the

district. Land added to the district is subject to all laws, liens, and provisions governing the district and the land in the district.

Acts 1971, 62nd Leg., p. 373, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.712. DUTY TO ADVISE EXECUTIVE DIRECTOR. The board shall furnish the executive director a detailed description of the land excluded and a detailed description of the land included within 30 days after the exclusion and inclusion of land under the provisions of Sections 51.702-51.711 of this code.

Acts 1971, 62nd Leg., p. 373, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981.

Sec. 51.713. RIGHT TO SERVE NEW LAND INCLUDED IN DISTRICT. The district has the same right to furnish water service to the included land that it previously had to furnish service to the excluded land. The mere inclusion of a larger total acreage than that excluded does not give the district the right to irrigate a larger total acreage or to appropriate a larger quantity or volume of public water for irrigation than the district would have had the right to irrigate or to appropriate before the exclusion and inclusion of the land.

Acts 1971, 62nd Leg., p. 373, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Without reference to the amendment of this section by Acts 1995, 74th Leg., ch. 778, Sec. 2, this section was repealed by Acts 1995, 74th Leg., ch. 715, Sec. 40 effective September 1, 1995.

Sec. 51.714. ADDING LAND BY PETITION OF LANDOWNER. The owner of land may file with the board a petition requesting that the land described by metes and bounds in the petition be included in the district. Notwithstanding any municipal ordinance, resolution, or any other statute to the contrary, a municipality may not require the annexing district or the landowner who is requesting annexation to obtain the municipality's consent to the district's annexation of the additional land if, at the time the petition is filed, the land to be annexed is contiguous to the district and at any time within the

preceding 12 months was not located within an area designated by ordinance or resolution of the municipality's governing body as the municipality's water and sewer service area or corporate limits, and the district has not previously issued any bonded indebtedness. The land shall be deemed to be contiguous to the district if it is separated from the district by public land or right of way. A district may not increase its total land area by more than 100 percent in any one calendar year. A municipality's consent shall not be required for the inclusion or annexation of irrigable land within the boundaries of a district primarily engaged in providing irrigation service to lands within its boundaries.

Acts 1971, 62nd Leg., p. 373, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1993, 73rd Leg., ch. 192, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 778, Sec. 2, eff. June 16, 1995.

Sec. 51.732. CONSOLIDATION OF DISTRICTS. Two or more districts governed by the provisions of this chapter may consolidate into one district as provided by Sections 51.733-51.736 of this code.

Acts 1971, 62nd Leg., p. 376, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.733. ELECTIONS TO APPROVE CONSOLIDATION. (a) After the directors of each district have agreed on the terms and conditions of consolidation, they shall order an election in each district to determine whether the districts should be consolidated.

(b) The directors of each district shall order the election to be held on the same day in each district and shall give notice of the election for at least 20 days in the manner provided by law for other elections.

(c) The districts may be consolidated only if the electors in each district vote in favor of the consolidation.

Acts 1971, 62nd Leg., p. 376, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.734. GOVERNING CONSOLIDATED DISTRICTS. (a) After two or more districts are consolidated, they become one district, except for the payment of debts created before consolidation, and are

governed as one district.

(b) During a period of 90 days after the date of the election to approve consolidation, the officers of each district shall continue to act jointly as officers of the original districts to wind up the affairs of their respective districts.

(c) The consolidation agreement may provide that the officers of the original districts shall continue to act jointly as officers of the consolidated district until the next general election or name persons to serve as officers of the consolidated district until the next general election if all officers of the original districts agree to resign.

(d) New officers of the consolidated district must qualify as officers of the district within the period of 90 days after the election and shall assume their offices at the expiration of the 90-day period.

(e) The current board shall approve the bond of each new officer.

(f) The consolidation agreement may provide for the establishment of five voting precincts described in the agreement and for the election of one director from each precinct. A district that adopts the precinct method of election will retain that method if it elects to be governed by another chapter of this code.

Acts 1971, 62nd Leg., p. 377, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1977, 65th Leg., p. 1764, ch. 712, Sec. 1, eff. Aug. 29, 1977.

Sec. 51.735. DEBTS OF ORIGINAL DISTRICTS. After two or more districts are consolidated, the debts of the original districts are protected and are not impaired. These debts may be paid by taxes or assessments levied on the land in the original districts as if they had not consolidated or contributions from the consolidated district on terms stated in the consolidation agreement.

Acts 1971, 62nd Leg., p. 377, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.736. ASSESSMENT AND COLLECTION OF TAXES. After consolidation, the officers of the consolidated district shall assess and collect taxes on property in the original district to pay debts

created by the original district.

Acts 1971, 62nd Leg., p. 377, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.748. DIVISION OF ORIGINAL DISTRICT WITH NO OUTSTANDING INDEBTEDNESS. (a) An original district heretofore created and governed by the provisions of this chapter (an "original district") that does not have any outstanding indebtedness secured by the taxes or net revenues of an original district may divide into two or more districts as provided by Sections 51.749 through 51.758 of this code; provided, however, no division shall occur that would result in the creation of a district of less than 100 acres in size. Upon petition of any landowner or upon the board's own motion, the board may consider a proposal to divide the original district.

(b) A district that:

(1) is located in two or more counties;

(2) is within the jurisdiction of two river authorities, one of which has issued an interbasin transfer permit to a city which provides the district's water supply;

(3) has not constructed any facilities or incurred any indebtedness secured by taxes or net revenues; and

(4) was created by division under Sections 51.749 through 51.758 of this code may divide into two or more districts as provided by Sections 51.749 through 51.758 of this code; provided, however, no division shall occur that would result in the creation of a district of less than 100 acres in size. On petition of any landowner or on the board's own motion, the board may consider a proposal to divide the district.

Added by Acts 1989, 71st Leg., ch. 280, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1995, 74th Leg., ch. 437, Sec. 1, eff. Aug. 28, 1995.

Sec. 51.749. ELECTION TO APPROVE DIVISION. (a) After the board of the original district has agreed on the terms and conditions of division, which shall include a plan for the payment of any outstanding current obligations and performance of any outstanding obligations of the original district, and has prepared a metes and bounds description of the proposed districts, it shall order an election to be held in the district to determine whether the original

district should be divided as proposed.

(b) The board of the original district shall order the election to be held and shall give notice of the election at least 20 days prior to the election in the manner provided by law for other elections.

(c) The original district shall be divided if a majority of the qualified electors in the original district vote in favor of the division. The resulting districts shall be assigned consecutive letters, corresponding to the number of the original district. For example, Harris County WCID #1 if divided into two districts shall become Harris County WCID #1A and Harris County WCID #1B. No other confirmation election shall be necessary. Provided, however, each resulting district desiring to issue bonds payable wholly or partially from ad valorem taxes shall be required to obtain authorization for the issuance of such bonds by a majority vote of the resident electors of such district voting in an election called for that purpose. Notice of such election shall be given as generally set forth for bond elections in this chapter. Each resulting district desiring to levy a maintenance tax shall be required to obtain authorization by a majority vote of the qualified resident electors of such district voting in an election called for that purpose. Notice of such election shall be given as generally set forth for such elections in this chapter.

Added by Acts 1989, 71st Leg., ch. 280, Sec. 1, eff. Aug. 28, 1989.

Sec. 51.750. GOVERNING RESULTING DISTRICTS. (a) After the original district is divided into two or more districts, the resulting districts shall be separate districts and shall be governed as separate districts.

(b) During a period of 90 days after the date of the election to approve division, the board of the original district shall continue to act in behalf of the original district to wind up the affairs of the original district.

(c) The directors of the original district shall continue to act as directors of one of the resulting districts until the next general election and shall name persons to serve as temporary directors of each of the other resulting districts until an election is held on the next uniform election date for elections set forth in

Section 41.001, Election Code, for the election of permanent directors. Upon the election of such directors, the three directors receiving the greatest number of votes shall serve until May of the first even-numbered year after the expiration of four years from the date of the election and two directors shall serve until May of the first even-numbered year after the expiration of two years from the date of the election.

(d) The temporary directors of each of the resulting districts must qualify as directors of the district pursuant to Section 51.072 within the period of 90 days after the election approving the division of the original district and shall assume their offices at the expiration of the 90-day period.

(e) The board of each of the resulting districts shall approve the bond of each director.

Added by Acts 1989, 71st Leg., ch. 280, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1995, 74th Leg., ch. 715, Sec. 7, eff. Sept. 1, 1995.

Sec. 51.751. CURRENT OBLIGATIONS OF ORIGINAL DISTRICT. After the division of the original district into two or more districts, the current obligations and any bond authorizations of the original district are protected and are not impaired. These debts may be paid by taxes, revenues, or assessments levied on the land in the original district as if it had not divided or contributions from each of the resulting districts on terms stated in the division proposed by the board and approved by the election under Section 51.749 of this code.

Added by Acts 1989, 71st Leg., ch. 280, Sec. 1, eff. Aug. 28, 1989.

Sec. 51.752. POWERS OF RESULTING DISTRICTS. (a) After division, each of the resulting districts shall have all of the power to incur and pay debts created by each district and shall in every respect have the full power and authority of a district created and governed by the provision of this chapter.

(b) Each of the resulting districts shall have the authority to contract with one another for the provision of water, wastewater, and such other matters as the board of directors of each of the districts deems appropriate.

(c) Each of the resulting districts shall assume the

obligations of the original district under any agreements or resolutions consenting to the creation of the original district imposed by any municipality having jurisdiction over such creation to the extent that such agreements and resolutions (i) are applicable, (ii) are not contrary to any other law or the provisions of this chapter, and (iii) do not impose obligations that limit the district's powers and authority to issue bonds for any purpose authorized under this chapter. Any such obligations that so limit the district's powers and authority to issue bonds for any purpose authorized under this chapter are void.

(d) Any other obligations of the original district shall be divided pro rata among the resulting districts either on an acreage basis or on such other terms as are satisfactory to such resulting districts.

Added by Acts 1989, 71st Leg., ch. 280, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1995, 74th Leg., ch. 778, Sec. 3, eff. June 16, 1995.

Sec. 51.753. NOTICE OF RESULTING DISTRICTS. Within 30 days after the election within the original district that confirms a plan for division, the original district shall provide written notice of such plan to the commission, the attorney general, the commissioners court of any county in which such original district is located, and any municipality having extraterritorial jurisdiction over the land within the original district.

Added by Acts 1989, 71st Leg., ch. 280, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.323, eff. Sept. 1, 1995.

Sec. 51.754. EXCLUSION OF LAND FROM DISTRICT WITHOUT INDEBTEDNESS. An original district governed by the provisions of this chapter that does not have any outstanding indebtedness secured by the taxes or net revenues of the district may exclude land from the district as provided by Sections 51.754 through 51.758 of this code.

Added by Acts 1989, 71st Leg., ch. 280, Sec. 1, eff. Aug. 28, 1989.

Sec. 51.755. APPLICATION TO EXCLUDE LAND. (a) A petition for exclusion of land under Sections 51.748 through 51.758 of this code must accurately describe the land to be excluded by metes and bounds or by reference to a plat recorded in the plat records of the county or counties in which the original district is located.

(b) The petition must be signed by the owner or owners of the land to be excluded, or by at least 10 percent of the owners of the land to be excluded, or by five or more of the owners if the number of owners is more than 50, and must be filed with the district at least 15 days before the hearing on the petition for exclusion and shall clearly state the particular grounds on which the exclusion is sought. Only the ground stated in the petition shall be considered. Notice of the hearing shall be published by the board once a week for two consecutive weeks in one or more newspapers of general circulation in the original district. The first publication shall appear at least 15 days and not more than 40 days before the date of the hearing.

Added by Acts 1989, 71st Leg., ch. 280, Sec. 1, eff. Aug. 28, 1989.

Sec. 51.756. FINDINGS BY THE BOARD. Before determining to exclude any land under Sections 51.754 through 51.758 of this code, the board shall find that the district has no obligations that will be impaired by the exclusion of the land, the district will incur no obligations because of that exclusion, and that the exclusion is in the best interest of the district.

Added by Acts 1989, 71st Leg., ch. 280, Sec. 1, eff. Aug. 28, 1989.

Sec. 51.757. EXCLUDING LAND. (a) After considering all engineering data and other evidence presented to it, if the board makes the findings provided in Section 51.756 of this code and determines that it would be in the best interest of the district to exclude the land, the board shall enter an order excluding all land meeting the conditions and shall redefine the boundaries of the original district in order to embrace all land not excluded. In the event the land to be excluded contains water or wastewater customers of the district, such customers shall remain customers of the district, and owners of lots to which district water and wastewater

facilities have already been extended shall also be allowed to connect to the district's system and shall be customers of the district.

(b) Except as provided by Subsection (d) of this section, an order excluding land pursuant to a petition signed by the owner or owners of the land to be excluded takes effect on the date the board enters the order.

(c) Except as provided by Subsection (d) of this section, an order excluding land pursuant to a petition signed by less than all of the owners of the land to be excluded takes effect:

(1) if the district does not receive a timely petition under Section 51.758 of this code on the day following the deadline for submission of a petition; or

(2) if the district receives timely petition under Section 51.758 of this code and the exclusion is ratified at an election held for that purpose.

(d) Before an order excluding land under Sections 51.754 through 51.758 of this code becomes effective, all taxes levied and assessed by the district on the land to be excluded shall be fully paid.

Added by Acts 1989, 71st Leg., ch. 280, Sec. 1, eff. Aug. 28, 1989.

Sec. 51.758. NOTICE OF CERTAIN EXCLUSIONS; PETITION FOR RATIFICATION ELECTION. (a) If the board issues an order excluding land pursuant to a petition signed by less than all of the owners of the land to be excluded, the board shall publish notice describing the excluded land and stating that the exclusion becomes final if the district does not receive, not later than the 35th day after the date of the board's order, a petition requesting a ratification election that is signed by at least 10 percent of the qualified voters that reside in the land area to be excluded.

(b) The board shall publish the notice required by Subsection (a) of this section once a week for two consecutive weeks in a newspaper of general circulation in the district. The first notice must be published not later than the fifth day after the date of the board's order.

(c) If the district receives, not later than the 35th day after the date of the board's order, a petition requesting a ratification

election that is signed by at least 10 percent of the qualified voters that reside in the land area to be excluded, the order does not take effect unless approved by a majority vote at a ratification election held for that purpose of the residents of the district.

(d) The notice of the election, the manner and the time of giving the notice, the manner of holding the election, and qualifications of the voters are governed by Subchapter E of this chapter.

Added by Acts 1989, 71st Leg., ch. 280, Sec. 1, eff. Aug. 28, 1989.

Sec. 51.759. EXCLUSION OF CERTAIN NONIRRIGATED LAND. (a) If a district is principally engaged in providing water for agricultural irrigation or the primary purpose of the district is to provide water for agricultural irrigation, by complying with Sections 51.760 through 51.766, the board may exclude from the district land that is not being irrigated because:

(1) the land is not irrigable;

(2) the owners of a majority of the acreage of the land no longer intend to irrigate the land;

(3) the land has been subdivided into town lots, town lots and blocks, or small parcels having the same general nature of town lots, including lots and blocks designed, intended, or suitable for a residential, commercial, or other nonagricultural purpose; or

(4) the land is located on subdivided land and is:

(A) designated as a street, alley, parkway, or park; or

(B) a railroad property or right-of-way.

(b) Land described by Subsection (a) may be excluded regardless of whether:

(1) the land is within or near municipal boundaries; or

(2) a plat or map of the land has been filed for record in the office of the county clerk of the county in which any part of the land is located.

(c) The board may not exclude land described by Subsection (a) if the land has been used for an agricultural purpose within the year preceding the date of the hearing held under Section 51.761.

Added by Acts 1995, 74th Leg., ch. 42, Sec. 1, eff. Aug. 28, 1995.

Sec. 51.760. INITIATING EXCLUSION. (a) A petition to exclude land may be filed with the board by the owners of a majority in acreage of land described by Section 51.759 that is located in the district.

(b) The petition must accurately describe the land to be excluded by metes and bounds or lot and block number. A petition for exclusion of other property must describe the property to be excluded.

(c) The board may initiate a proceeding to exclude land without receiving a petition by holding a hearing on its own motion and issuing an order as provided by Section 51.761.

Added by Acts 1995, 74th Leg., ch. 42, Sec. 1, eff. Aug. 28, 1995.

Sec. 51.761. HEARING, NOTICE, AND ORDER OF EXCLUSION. (a) On the board's motion or on receipt of a petition to exclude land, the board shall give notice and hold a hearing on the proposed exclusion.

(b) The board shall publish notice of the hearing in a newspaper of general circulation in the district once each week for two consecutive weeks. The first publication must appear at least 14 days before the date of the hearing.

(c) The notice must advise interested property owners in the district:

(1) of the right to offer evidence in support of or to contest the proposed exclusion;

(2) of the right to present a petition for exclusion under Sections 51.759 through 51.766;

(3) of the date, time, and place of the hearing; and

(4) by a general description of the property proposed for exclusion.

(d) The board may adjourn the hearing from one day to another until the board hears every person who desires to be heard.

(e) The board shall specifically describe all property that it proposes to exclude on its own motion.

(f) In a hearing on exclusion of property on the board's own motion, the board shall hear protests and evidence against the exclusion before the board hears any other evidence or matter.

(g) The board shall issue an order excluding the property if after considering evidence presented at the hearing the board finds

that:

(1) the described property is eligible for exclusion under Section 51.759;

(2) if applicable, the written consent required by Section 51.762 has been filed;

(3) the owners of the property to be excluded do not object to the exclusion; and

(4) to exclude the property from the district is in the best interest of the district and of the property.

Added by Acts 1995, 74th Leg., ch. 42, Sec. 1, eff. Aug. 28, 1995.

Sec. 51.762. CONSENT OF DEBT HOLDERS. If the district has outstanding bonded debt or debt under a loan from a governmental agency, a written consent to the exclusion from an authorized representative of the holders of the debt shall be obtained and filed with the district before the hearing is held.

Added by Acts 1995, 74th Leg., ch. 42, Sec. 1, eff. Aug. 28, 1995.

Sec. 51.763. RESULTS OF EXCLUSION. (a) On the issuance of an order excluding property:

(1) the property is no longer a part of the district and is not entitled to district services;

(2) any tax, assessment, or other charge owed to the district at the time of exclusion remains the obligation of the owner of excluded property and continues to be secured by statutory liens on the property, if any; and

(3) the owner of excluded land has no further liability to the district for future taxes, assessments, or other charges of the district attributable to the excluded land.

(b) The district shall record a copy of the order excluding the property from the district, certified and acknowledged by the secretary of the board, in the real property records of the county in which the excluded property is located.

Added by Acts 1995, 74th Leg., ch. 42, Sec. 1, eff. Aug. 28, 1995.

Sec. 51.764. DISTRICT FACILITIES ON EXCLUDED PROPERTY. The exclusion does not affect or interfere with any rights that the district has to maintain and continue operation of any canal, ditch, pipeline, pump, or other facility of the district located on land excluded by the order to serve land remaining in the district.

Added by Acts 1995, 74th Leg., ch. 42, Sec. 1, eff. Aug. 28, 1995.

Sec. 51.765. WATER ALLOCATIONS. (a) After the district adopts an order excluding nonirrigated property, a municipality or water supply corporation that serves the excluded land with a potable water supply may petition the district to apply to the commission to convert the proportionate irrigation water allocation of the excluded land from irrigation use to municipal use allocation.

(b) The district shall make the application to the commission not later than the 30th day after the date a municipality or water supply corporation that serves the land with a potable water supply petitions the district to make the application if the municipality or water supply corporation:

(1) pays the district the amount the district estimates will be its reasonable expenses and attorney's fees incurred in the commission conversion proceedings; and

(2) enters into an agreement with the district establishing the terms on which the water allocation shall be delivered or made available to the municipality or water supply corporation.

(c) If the parties cannot agree to water allocation terms, the parties shall attempt resolution of their differences through mediation, arbitration, or another alternative dispute resolution process. The commission does not have jurisdiction to resolve the parties' differences.

(d) Together with the district's application, the municipality or water supply corporation must provide the commission with evidence to support the projected need for water for the five years after the conversion to a municipal-use water allocation.

Added by Acts 1995, 74th Leg., ch. 42, Sec. 1, eff. Aug. 28, 1995.

Sec. 51.766. SUIT TO REVIEW EXCLUSION. (a) A person who owns an interest in property affected by an exclusion order issued under

Section 51.761 may sue to review, set aside, modify, or suspend the order not later than the 20th day after the effective date of the order.

(b) Venue is in any district court that has jurisdiction in the county in which the district is located. If the district includes land in more than one county, venue is in the district court having jurisdiction in the county in which the largest portion of the acreage of the land sought to be excluded from the district is located.

(c) A person may appeal from the judgment or order of a district court in a suit brought under this section to the court of civil appeals and the supreme court as in other civil cases in which the district court has original jurisdiction.

Added by Acts 1995, 74th Leg., ch. 42, Sec. 1, eff. Aug. 28, 1995.

SUBCHAPTER P. DISSOLUTION OF DISTRICT

Sec. 51.781. DISSOLUTION OF DISTRICT PRIOR TO ISSUANCE OF BONDS. (a) If the electors of a district reject the proposal to issue construction bonds by a constitutional or statutory majority vote, the board must dissolve the district and liquidate the affairs of the district as provided in Sections 51.781-51.792 of this code.

(b) Subject to the provisions of Subchapter G of Chapter 50 of this code, if a district finds at any time before the authorization of construction bonds or the final lending of its credit in another form that the proposed undertaking for any reason is impracticable or apparently cannot be successfully and beneficially accomplished, the board may issue notice of a hearing on a proposal to dissolve the district.

(c) Subject to the provisions of Subchapter G of Chapter 50 of this code, if 20 percent of the qualified voters of a district petition the board for a hearing on a proposal to dissolve the district and deposit with the board an amount estimated to cover the actual cost of giving notice and holding the hearing, the board shall publish notice of the hearing within 10 days and shall hold the hearing within 40 days after the filing of the petition, as provided in Sections 51.782-51.785 of this code. If the finding is against the petition, the deposit shall be applied to pay the cost of giving notice and holding the hearing.

Acts 1971, 62nd Leg., p. 377, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.782. NOTICE OF HEARING. The board shall post notice of the hearing on the bulletin board at the courthouse door of each county in which the district is located and at three or more other public places within the boundaries of the district. The notice must be posted at least 10 days before the hearing on the proposed dissolution of the district.

Acts 1971, 62nd Leg., p. 378, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.783. HEARING. The board shall hear all interested persons and shall consider their evidence at the time and place stated in the notice.

Acts 1971, 62nd Leg., p. 378, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.784. BOARD'S ORDER TO CONTINUE OR DISSOLVE DISTRICT. The board shall determine from the evidence whether the best interests of the persons, land, and property in the district will be promoted by prosecuting the district's plans or whether the best interests of the persons and property in the district will be served by dissolving the district, and the board shall enter the appropriate findings and order in the record.

Acts 1971, 62nd Leg., p. 378, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.785. JUDICIAL REVIEW OF BOARD'S ORDER. The board's decree to continue or to dissolve the district shall be final and cannot be judicially reviewed except on the ground of fraud, palpable error, or gross abuse of discretion.

Acts 1971, 62nd Leg., p. 378, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.786. APPOINTMENT OF TRUSTEE. (a) If the board orders the dissolution of the district, it shall appoint a director or some

other competent person as trustee to close the affairs of the district as soon as practicable.

(b) The board shall determine the term of service and the amount of compensation for the trustee.

Acts 1971, 62nd Leg., p. 378, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.787. DISCHARGE OF DISTRICT'S OBLIGATIONS BY TRUSTEE. (a) The trustee shall reduce all assets and resources of the district to possession and money and apply them to discharge the outstanding obligations of the district, having regard to specific funds.

(b) If required, the board shall levy, assess, and collect sufficient additional taxes to pay all necessary expenses and outstanding obligations of the district.

Acts 1971, 62nd Leg., p. 378, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.788. DISCHARGE OF TRUSTEE. The trustee shall be discharged when all obligations of the district are paid and the trustee's account is verified and settled.

Acts 1971, 62nd Leg., p. 379, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.789. FINAL ORDER OF DISSOLUTION. After all obligations are paid and the trustee is discharged, the board shall enter its final order of dissolution and record the final order in the deed records of the county or counties in which the district is located.

Acts 1971, 62nd Leg., p. 379, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.790. WATER RIGHTS OF DISSOLVED DISTRICT. Water rights held from the state shall revert to the state and may not be assigned by the district in anticipation of dissolution.

Acts 1971, 62nd Leg., p. 379, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.791. TAXES IN EXCESS OF DISTRICT'S OBLIGATIONS. (a) If taxes have been collected by the dissolved district in excess of the amount required to liquidate the obligations of the district, the excess shall be paid ratably to the county treasurer or treasurers of the county or counties in which the district was located.

(b) The commissioners courts shall credit the money received from the dissolved district to the interest and sinking fund for any outstanding county bonds. If the county has no outstanding bonds, the money may be applied as the commissioners court lawfully directs.

Acts 1971, 62nd Leg., p. 379, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.793. DISSOLUTION OF DISTRICT FOR FAILURE TO COMPLETE PLANT. Subject to the provisions of Subchapter G of Chapter 50 of this code if a district has not within 10 years from the date of its creation commenced and completed the construction of a plant and improvements to carry out the purposes of its creation in accordance with the plans adopted by the district, the board may enter a resolution in its minutes to dissolve the district under the provisions of Sections 51.794-51.828 of this code. After compliance with these provisions, a vote of the electors of the district, and the payment of its valid, enforceable indebtedness, the district may be dissolved.

Acts 1971, 62nd Leg., p. 379, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.794. RESOLUTION TO DISSOLVE DISTRICT. The board shall find in its resolution to dissolve the district that the plans of the district are impracticable or that the purposes of the district should be abandoned and shall state the reasons for the finding.

Acts 1971, 62nd Leg., p. 379, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.795. STATEMENTS OF INDEBTEDNESS AND EXPENSES. The board shall prepare or have prepared and shall approve a statement of all valid, enforceable indebtedness of the district and shall enter the statement in the minutes. The board shall prepare or have prepared an estimate of all expenses incurred or to be incurred in

the dissolution of the district and in the collection of sufficient taxes to pay all valid, enforceable indebtedness of the district.

Acts 1971, 62nd Leg., p. 380, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.796. ELECTION TO APPROVE DISSOLUTION OF DISTRICT AND ISSUANCE OF DISSOLUTION BONDS. The board shall enter an order calling an election to determine whether or not the district shall be dissolved and bonds issued to pay the district's indebtedness and estimated expenses.

Acts 1971, 62nd Leg., p. 380, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.797. MAXIMUM AMOUNT, INTEREST RATE, AND MATURITY OF BONDS. The maximum amount of bonds to be voted on and issued shall not be more than the total amount of the approved valid, enforceable indebtedness and the estimate of expenses, exclusive of the estimated cost of collection of taxes. The maximum amount of bonds, exclusive of interest and expenses of collection, to be issued for fees and expenses of dissolution of the district shall not be more than an amount equal to $2 times the number of acres in the district. The bonds shall mature serially over a period of not more than seven years.

Acts 1971, 62nd Leg., p. 380, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.798. NOTICE OF ELECTION. (a) The president and secretary of the board shall issue notice of the election, stating:

(1) the findings of the board with reference to the dissolution of the district;

(2) the amount of bonds to be issued;

(3) the interest rate on the bonds; and

(4) the time and place of the election.

(b) The notice also shall contain a statement of the estimates and the expenses incurred and to be incurred in the dissolution of the district and the collection of taxes for the payment of the bonds and shall state that the bonds will be payable by the levy of taxes on the taxable property in the district in proportion to the values

of the property as provided in Section 51.804 of this code.

(c) The notice shall be published once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which any part of the district is located. The first publication shall be at least 14 days before the day of the election.

Acts 1971, 62nd Leg., p. 380, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.799. PROCEDURE FOR HOLDING ELECTION. (a) The ballots for the election shall be printed to provide for voting for or against the proposition: "Dissolution of the district and issuance of dissolution bonds and the levy of taxes for the payment of the bonds."

(b) The election shall be conducted and returns made and canvassed according to the provisions in this chapter for construction bond elections.

Acts 1971, 62nd Leg., p. 380, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.800. ISSUANCE AND SALE OF DISSOLUTION BONDS. (a) If a majority of the electors at the election vote in favor of the dissolution of the district and the issuance of bonds and the levy of taxes for the payment of the bonds, the board shall issue and sell the bonds or any part of them. The bonds shall be known as "dissolution bonds."

(b) The board may deliver the dissolution bonds or any part of them in satisfaction of the valid, enforceable indebtedness of the district for which the bonds are issued, or in payment of expenses incurred or to be incurred in connection with the dissolution of the district, or in payment of services rendered or to be rendered to the district.

(c) The dissolution bonds shall be:

(1) serially numbered, commencing with the first maturities;

(2) issued in the name of the district;

(3) signed by the president; and

(4) attested by the secretary, with the seal of the district attached.

(d) The board shall determine the maturities of the bonds not to exceed seven years from their date, the denominations of the bonds, and the interest.

Acts 1971, 62nd Leg., p. 381, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.801. DESTROYING UNSOLD BONDS. If a majority of the electors at the election vote in favor of the dissolution of the district, the board shall destroy all unsold bonds of the district and enter an order cancelling all unissued and unsold bonds authorized by the electors. After the destruction and the entry of the order, the bonds shall have no further force or effect.

Acts 1971, 62nd Leg., p. 381, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.802. BOARD'S AUTHORITY TO CONTRACT. The board may contract with trustees, engineers, attorneys, and others it considers necessary or desirable to properly liquidate and wind up the affairs of the district. The board also may assume obligations made by others for the benefit of the district, or from which the district benefited, which in its judgment may be fair and equitable.

Acts 1971, 62nd Leg., p. 381, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.803. TAX TO PAY DISSOLUTION BONDS. The order issuing the dissolution bonds shall provide that the principal of and interest on the bonds shall be payable from the proceeds of a tax to be levied on the taxable property located in the district. The tax shall be in an amount sufficient for the payment of the principal and interest.

Acts 1971, 62nd Leg., p. 381, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.804. DETERMINING AMOUNT OF TAX. (a) The value of all of the taxable property of the district shall be taken at the assessed value as determined in the manner provided by the Property Tax Code, and an amount equal to the total of the principal and all

interest to maturity on the bonds voted plus the estimated cost of collection of taxes shall be assessed against the taxable property of the district on the ad valorem basis.

(b) The tax against the taxable property of each owner shall be that portion of the total principal and interest of the dissolution bonds and costs of collection which the assessed value of the taxable property of the owner bears to the total assessed values in the district.

Acts 1971, 62nd Leg., p. 381, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 51.805. PAYMENT OF TAX. The amount of the tax on the taxable property of each owner shall be payable in equal annual installments during the period in which the bonds mature, on dates specified in the order issuing the bonds.

Acts 1971, 62nd Leg., p. 382, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.806. ADVANCE PAYMENT OF TAXES IN CASH. The order issuing the bonds shall provide that a property owner may secure release of the entire amount of his taxable property as assessed on the rolls from the tax levied for the dissolution bonds by the payment in cash of the full amount of tax.

Acts 1971, 62nd Leg., p. 382, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.807. COMPUTING AMOUNT OF ADVANCE CASH PAYMENT. (a) In order to compute the full amount of an advance cash payment, the interest rate on the bonds shall be applied on an annual basis to each unpaid installment of taxes for the number of years the installment of taxes must run before being due. The total of the items computed shall be deducted from the face amount of the unpaid installments of taxes.

(b) In order to compute the full amount of an advance cash payment, the interest rate on the bonds shall be applied on an annual basis to each unpaid past-due installment of taxes for the number of

years the installment has been past due, and 10 percent of the face amount of each installment that is past due shall be added as a penalty. The total of the items computed shall be added to the unpaid installments.

Acts 1971, 62nd Leg., p. 382, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.808. SURRENDER OF BONDS IN PAYMENT OF TAXES. The order issuing the bonds shall provide that any of the bonds with all unmatured interest and all appurtenant coupons may be surrendered at any time in payment of all unpaid installments of the taxes. The amount of taxes found to be due by the method provided in Section 51.809 of this code may be discharged by the surrender of the proper amount of dissolution bonds, together with all unpaid appurtenant interest coupons at the face value of the bonds and coupons.

Acts 1971, 62nd Leg., p. 382, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.809. COMPUTING AMOUNT OF PAYMENT MADE BY SURRENDERING BONDS. (a) In order to compute payment by surrendering bonds, the interest rate on the bonds shall be applied on an annual basis to each unpaid installment of taxes for the number of years the installment must run before being due. The total of the items computed shall be deducted from the face amount of the unpaid installments of taxes.

(b) In order to compute payment by surrendering bonds, the interest rate on the bonds shall be applied to each unpaid installment of taxes for the number of years the installment has been past due and 10 percent of the face amount of each installment of taxes that is past due shall be added as a penalty. The total of the items computed shall be added to the face amount of each unpaid installment of taxes.

Acts 1971, 62nd Leg., p. 382, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.810. USE BY TRUSTEE OF ADVANCE PAYMENTS OF TAX. The order issuing the bonds shall provide that the bonds shall be called and redeemed by the trustee in the inverse order of their maturity

and in the inverse order of their serial numbers. They shall be paid out of any funds received in advance payment of taxes that are not required for meeting any past-due and unpaid principal and interest or the next maturing installment of principal and interest.

Acts 1971, 62nd Leg., p. 383, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.811. APPROVAL AND REGISTRATION OF DISSOLUTION BONDS. After the dissolution bonds are issued by the board and before they are put in circulation, the bonds, at the option of the board, shall either be submitted to and approved by the attorney general and registered by the comptroller as provided in Sections 51.416-51.418 of this code or be validated by suit as provided in Sections 51.423-51.431 of this code. The provisions of these sections of this code which are not inconsistent with the provisions of this subchapter are applicable to the dissolution bonds provided for in this subchapter.

Acts 1971, 62nd Leg., p. 383, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.812. DISSOLUTION TAX ROLL. Before the issuance and delivery of the bonds, the board shall have the amount of dissolution tax imposed on each property in the district and its orders relating to the time and manner of payment of the tax entered on the current tax roll for the district.

Acts 1971, 62nd Leg., p. 383, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 51.819. FILING DISSOLUTION TAX ROLL. After the preparation of the dissolution tax roll, the board shall file the tax roll with the assessor and collector of the county or counties in which the district is located.

Acts 1971, 62nd Leg., p. 384, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 51.820. COLLECTION OF TAXES. The assessor and collector shall collect the taxes determined under Section 51.804 of this code on the land located in the county for which he is assessor and collector at the time and in the manner specified by the board in its various orders issuing the dissolution bonds and levying the taxes.

Acts 1971, 62nd Leg., p. 384, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 51.821. APPOINTMENT OF TRUSTEE. (a) Before the issuance and delivery of dissolution bonds, the board shall appoint a trustee of the funds to be collected from the taxes. The trustee shall be an individual or a bank or trust company in the county or one of the counties in which the district is located.

(b) The board may determine the powers, rights, duties, liabilities, and other matters relating to the trusteeship and the appointment of successor trustees which the board considers proper to effectuate the purpose of the trusteeship.

(c) The board may determine the bond to be given by the trustee and the amount to be paid to the trustee from the funds collected from the taxes.

Acts 1971, 62nd Leg., p. 384, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.822. AUTHORITY OF THE TRUSTEE. The trustee shall receive from the assessor and collector all proceeds from the assessments less the assessor and collector's charges and shall be the paying agent of the district for the bonds. The bonds shall be payable at the place of business of the trustee. The trustee shall be authorized by the order providing for the issuance of the bonds to institute suits in the name of the district for the use and benefit of the holders of the bonds and to apply all sums of money recovered in the suits to the payment of the bonds.

Acts 1971, 62nd Leg., p. 385, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.823. TAX LIEN. After filing the tax roll in the office

of the assessor and collector, the taxes, penalties, interest, and attorney's fees shall become a specific charge on and be secured by a lien superior to all other liens, except tax liens, on the personal property, land, and improvements listed on the tax roll regardless of whether the ownership of the personal property, land, and improvements is correctly stated on the tax roll.

Acts 1971, 62nd Leg., p. 385, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.824. FORECLOSURE OF LIEN. The lien may be foreclosed in the manner prescribed in the Property Tax Code in a suit or suits brought in the name of the district by the board, or by the trustee or his successor as provided by the board.

Acts 1971, 62nd Leg., p. 385, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 51.825. DEFAULT IN PAYMENT OF TAX INSTALLMENT. (a) Default in the payment of an installment of taxes levied for the payment of dissolution bonds for 60 days after the installment becomes due and payable as provided by the board shall, at the option of the board or the trustee, immediately mature the remaining installments and cause the entire amount of the taxes to immediately become due and payable.

(b) The trustee shall bring suit for the collection of the entire amount of the taxes and for the foreclosure of the lien securing the payment of the taxes.

Acts 1971, 62nd Leg., p. 385, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.826. PENALTY AND ATTORNEY'S FEE. (a) A penalty of 10 percent of the unpaid amount of taxes shall accrue immediately on default of payment of taxes after the 60 days.

(b) An attorney's fee of 10 percent of the unpaid amount of the taxes is due and payable immediately on institution of suit for collection and foreclosure.

(c) The penalty and attorney's fee shall be recovered in the

suit and shall constitute an addition to the taxes and shall be secured by the tax lien.

Acts 1971, 62nd Leg., p. 385, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.827. DISCHARGE OF LIEN. (a) On the final payment of the taxes, either the assessor and collector or the trustee shall issue a certificate certifying that the taxes have been fully satisfied and the lien is released.

(b) The execution and acknowledgment of the certificate and the recording of the certificate in the deed records of the county in which the property is located shall be full and conclusive evidence of the discharge of the taxes and lien.

Acts 1971, 62nd Leg., p. 386, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.828. DISTRICT CONSIDERED DISSOLVED. (a) On the issuance and sale or delivery of the dissolution bonds and the appointment and qualification of the trustee, the secretary shall deposit all available existing records of the district in the office of the county clerk of the county or one of the counties in which the district is located.

(b) The district immediately is considered dissolved for all purposes, except that the taxes levied against the taxable property may be enforced in the name of the district on behalf of the bondholders by the trustee or his successors. The surviving board may meet from time to time until the dissolution bonds are paid and discharged and may delegate its powers and give instructions to the trustee or his successors as the board sees fit and circumstances warrant. After the payment of all dissolution bonds, interest, and costs of collection, the board shall be dissolved.

(c) The board or the trustee if the board transfers the duty to the trustee shall give notice to the county clerk that all dissolution bonds, interest, and costs of collection have been paid. The clerk shall notify the director and librarian of the Texas State Library and arrange for the transfer of the records of the district to the custody of the Texas State Library and Archives Commission.

Acts 1971, 62nd Leg., p. 386, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 70, eff. Sept. 1, 1989.

Sec. 51.829. DISSOLUTION OF DISTRICT IN COUNTIES OF LESS THAN 11,000 POPULATION. Subject to the provisions of Sections 50.251-50.256 of this code, a district located entirely in a county having a population of less than 11,000, according to the last preceding federal census, may be abolished by a majority vote of the electors residing in the district at an election held for the purpose of determining whether or not the district should be dissolved.

Acts 1971, 62nd Leg., p. 386, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.830. PETITION FOR DISSOLUTION OF DISTRICT. A petition for the dissolution of the district shall be filed with the board and shall state the name of the district and the purpose for which the election is requested. The petition may refer to the order establishing the district for boundaries, limits, and area of the district.

Acts 1971, 62nd Leg., p. 386, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.831. SIGNATURES ON PETITION. A petition for dissolution of the district may be signed and filed in two or more copies. The petition shall be signed by a majority in number of the property owners with land in the district and the property owners of a majority in value of the land in the district, as shown by the tax rolls of the district, or 50 landowners if the number of landowners in the district is more than 50.

Acts 1971, 62nd Leg., p. 386, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.832. PROCEDURE FOR HOLDING ELECTION. (a) An election to determine whether or not the district shall be dissolved shall be held in accordance with the provisions of Subchapter E, of this chapter.

(b) The ballots for the election shall be printed to provide

for voting for or against the proposition: "The dissolution of district."

(c) The returns of the election shall be canvassed and the result declared by the board. The board shall enter an order in its minutes declaring the result of the election, which order shall be made and entered in accordance with Section 51.034 of this code. The order shall be filed in the office of the county clerk and recorded in the deed records of the county as provided in Section 51.034 of this code.

Acts 1971, 62nd Leg., p. 387, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.833. ELECTION IN DISTRICT INCLUDING CITY, TOWN, OR MUNICIPAL CORPORATION. In an election to dissolve a district in which a city, town, or municipal corporation is located, the city, town, or municipal corporation shall be a separate voting precinct, and the ballots cast in the city, town, or municipal corporation shall be counted and canvassed to show the result of the election there. If the city, town, or municipal corporation votes against the dissolution of the district and the balance of the district votes for the dissolution of the district, the district shall be dissolved.

Acts 1971, 62nd Leg., p. 387, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.834. SUBSEQUENT ELECTION. If the proposition to dissolve the district fails to carry at the election held for that purpose, no other election for the same purpose shall be held within one year after the date of the election.

Acts 1971, 62nd Leg., p. 387, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.835. DISTRICT DISSOLVED. If a majority of those voting at the election vote in favor of dissolving the district, the district shall be dissolved and shall have no further authority after the election, except that any debts incurred shall be paid and the organization shall be maintained until all the debts are paid.

Acts 1971, 62nd Leg., p. 387, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 51.836. TAXES TO PAY INDEBTEDNESS AFTER DISSOLUTION. If a district has outstanding bonds or other indebtedness maturing beyond the current year in which the dissolution occurs, the commissioners court of the county in which the district is located shall levy and have assessed and collected, in the manner prescribed in the Property Tax Code sufficient taxes on all taxable property in the district to pay the principal of and interest on the bonds and other indebtedness when due.

Acts 1971, 62nd Leg., p. 387, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

SUBCHAPTER Q. FLOOD CONTROL IN TRINITY RIVER BASIN

Sec. 51.851. DEFINITIONS. In this subchapter:

(1) "Authority" means the Trinity River Authority of Texas.

(2) "Basin" or "basinwide" means the entire Trinity River basin.

Added by Acts 1991, 72nd Leg., ch. 858, Sec. 2, eff. Sept. 1, 1991.

Sec. 51.852. COOPERATION WITH AUTHORITY, CORPS OF ENGINEERS, AND OTHER OWNERS. The commission, in conjunction with the authority, the United States Army Corps of Engineers, and other reservoir owners in the Trinity River basin, shall develop and implement a coordinated basinwide water release program for flood routing and control.

Added by Acts 1991, 72nd Leg., ch. 858, Sec. 2, eff. Sept. 1, 1991.

Sec. 51.853. COOPERATION WITH AUTHORITY AND OWNERS. The commission, in conjunction with the authority and all reservoir owners in the Trinity River basin, may review, at least every 10 years, all water rights permits affecting the basin.

Added by Acts 1991, 72nd Leg., ch. 858, Sec. 2, eff. Sept. 1, 1991.

Sec. 51.854. FLOOD WARNING SYSTEM. The commission and the authority, in conjunction with affected political subdivisions, shall develop a basinwide flood warning system to alert the public and local officials of imminent flooding in order to effectuate orderly withdrawal from floodplains and to institute other appropriate precautions.

Added by Acts 1991, 72nd Leg., ch. 858, Sec. 2, eff. Sept. 1, 1991.

SUBCHAPTER R. OPTION TO EXCHANGE MUNICIPAL JURISDICTION

Sec. 51.871. DEFINITIONS. In this subchapter:

(1) "Dissociated municipality" means a home-rule municipality from whose extraterritorial jurisdiction a district is transferred under this subchapter.

(2) "Associated municipality" means a home-rule municipality into whose extraterritorial jurisdiction a district is transferred under this subchapter.

(3) "Home-rule municipality" has the meaning assigned by Section 5.004, Local Government Code.

Added by Acts 1993, 73rd Leg., ch. 97, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.872. AUTHORITY TO TRANSFER DISTRICT BETWEEN MUNICIPALITIES' EXTRATERRITORIAL JURISDICTION. The board of directors of a district by order may transfer the district from the extraterritorial jurisdiction of a municipality to the extraterritorial jurisdiction of another municipality if the board finds that:

(1) as of January 1, 1993, the municipality that has extraterritorial jurisdiction over the district excluded the district from the service area of the municipality's municipally owned water or sewer utility system;

(2) the other municipality has included or agreed to include the district within the service area of the municipality's municipally owned water or sewer utility system, and the municipality has adopted a water or sewer utility service plan agreeable to the board; and

(3) the municipally owned water or sewer utility system of the other municipality has agreed to provide the service to the

district within one year.

Added by Acts 1993, 73rd Leg., ch. 97, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.873. APPLICABILITY. This subchapter applies only to a district that:

(1) has a contiguous area of more than 1,000 acres;

(2) is within the jurisdiction of two or more counties;

(3) is within the jurisdiction of two river authorities, one of which has issued an interbasin transfer permit to the associated municipality;

(4) has not yet constructed any facilities or borrowed any money;

(5) is in the extraterritorial jurisdiction of the dissociated municipality and that municipality is located principally in one of the two counties in which the district is located;

(6) is adjacent to the municipal boundary or the area subject to the extraterritorial jurisdiction of the associated municipality and that municipality is located principally in the other of the two counties in which the district is located; and

(7) is subject to special storm water runoff or nonpoint source pollution rules of at least one of the two river authorities.

Added by Acts 1993, 73rd Leg., ch. 97, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.874. EFFECT OF TRANSFER. On and after the effective date of the board's order under Section 51.872 of this chapter, the district:

(1) is subject to a municipal ordinance that applies to the extraterritorial jurisdiction of the associated municipality; and

(2) is not subject to a municipal ordinance that applies to the extraterritorial jurisdiction of the dissociated municipality.

Added by Acts 1993, 73rd Leg., ch. 97, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.875. SUBCHAPTER SUPERSEDES. To the extent of any conflict, this subchapter controls over any other law related to the creation, application, or operation of the extraterritorial

jurisdiction of a municipality.

Added by Acts 1993, 73rd Leg., ch. 97, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 51A. METROPOLITAN WATER CONTROL AND IMPROVEMENT DISTRICTS AND SUBDISTRICTS

Sec. 51A.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a district.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "District" means a conservation and reclamation district that:

(A) is created by general or special law pursuant to Section 59, Article XVI, Texas Constitution;

(B) is governed by Chapter 51 to the extent the provisions of that chapter are not inconsistent with the provisions of any special law creating the district; and

(C) contains at least 10,000 acres after all exclusions of land have occurred.

(4) "Refunding bond" means a refunding bond issued by a district.

(5) "Residential neighborhood" means an area that, as it develops, will consist of detached single-family residences on not less than 79 percent of the net residential acreage of the area and will consist of condominiums or multifamily rental units with a density greater than 15 units per net residential acre on not more than 10 percent of the net residential acreage of the area. Notwithstanding the foregoing, "residential neighborhood" means an area that, as it develops, will consist of detached single-family residences on not less than 87-1/2 percent of the net residential acreage of the area if the preliminary engineering report adopted by the board before the authorization of bonds stipulates that approximately 87-1/2 percent of the net residential acreage will consist of single-family residences; provided, however, that on the full utilization of all facilities constructed with the proceeds of the bonds authorized, the definition of "residential neighborhood" stated in the first sentence of this subdivision applies. A variance of as much as three percent from the percentages set forth above is permissible during development if the percentages are met on

completion of development.

(6) "Subdistrict" means a conservation and reclamation district created pursuant to Section 59, Article XVI, Texas Constitution, and this chapter to provide fresh water supply and distribution, sanitary sewage collection and treatment, and storm sewer and drainage facilities and services to residential neighborhoods.

(7) "Subdistrict board" means the board of directors of a subdistrict.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.004(a), eff. September 1, 2015.

Sec. 51A.002. REFUNDING BONDS. (a) A district may issue bonds to refund all or part of its outstanding bonds, notes, or other obligations, including matured but unpaid interest. Except as otherwise provided by this section, Section 51.438 applies to refunding bonds issued under this section.

(b) Refunding bonds may be payable from:

(1) the same source as the bonds, notes, or other obligations being refunded;

(2) the source described by Subdivision (1) and additional sources; or

(3) sources other than the source described by Subdivision (1).

(c) A district must publish notice of intent to issue refunding bonds at least once a week for two consecutive weeks in a newspaper of general circulation within the district and at least 15 days before the date of the meeting of the board at which it is proposed to issue the bonds. Before the issuance of the bonds, if a petition signed by not less than 10 percent of the registered voters of the district is filed with the district calling for a referendum on the refunding bond issue, the board shall, at its next meeting, order an election to be held within the district to determine whether the bonds shall be issued. The election shall be held in the manner prescribed by Chapter 1251, Government Code, for the issuance of municipal bonds.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.004(a), eff. September 1, 2015.

Sec. 51A.003. CREATION OF SUBDISTRICTS. (a) The commission may create subdistricts over designated territory within the boundaries of a district as provided by this section.

(b) A petition that contains the substance of the requirements of Sections 51.013 and 51.014 must be filed with the commission.

(c) The commission shall have notice of the hearing on the petition given in the manner required by Section 51.018.

(d) The hearing must be conducted in the manner provided by Section 51.020, and the commission shall grant or refuse the petition in the manner provided by Section 51.021. An appeal from the decision of the commission must be made in the manner provided by Sections 51.022 through 51.025. The commission shall appoint five directors to serve as the subdistrict board, each of whom must meet the qualifications provided by Section 51.072.

(e) Not later than the 60th day after the date on which a petition for the creation of a subdistrict is granted by the commission, the subdistrict board shall adopt an order calling elections within the boundaries of the subdistrict in the manner provided by Subchapter D, Chapter 49, to:

(1) confirm the creation of the subdistrict in the manner provided by Section 49.102;

(2) authorize the issuance of bonds by the subdistrict or by the district on behalf of the subdistrict to be repaid by ad valorem taxes, revenue, or ad valorem taxes and revenue derived by the subdistrict;

(3) authorize a tax within the boundaries of the subdistrict to make payments under a contract with the district to support refunding bonds of the district in accordance with the exclusions procedure provided by Section 51A.005;

(4) authorize a maintenance tax within the boundaries of the subdistrict in the manner provided by Section 49.107; and

(5) elect a permanent board of directors for the subdistrict in the manner provided by Subchapter D, Chapter 49, and Section 51.075.

(f) A subdistrict:

(1) may sue and be sued in its own name;

(2) until excluded from the boundaries of the district in accordance with Section 51A.005, has concurrent jurisdiction with the

district that is in the territory within the boundaries of the subdistrict; and

(3) may exercise the rights and powers of the district within the boundaries of the subdistrict.

(g) The ad valorem plan of taxation applies to each subdistrict, and a hearing for exclusions of land from a subdistrict is not necessary before an election under Subsection (e) is held.

(h) A subdistrict may be dissolved in the same manner as a district.

(i) A subdistrict is governed by Chapter 51 and all other general laws of this state to the extent those laws are not inconsistent with this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.004(a), eff. September 1, 2015.

Sec. 51A.004. SUBDISTRICT BONDS. (a) Before adopting an order calling elections under Section 51A.003(e), the engineer for a subdistrict shall present a report to the subdistrict board that conforms to Section 51.410 with regard to the bonds to be issued by the subdistrict or by the district on behalf of the subdistrict.

(b) After the engineer's report is filed and approved, the subdistrict board shall order an election within the boundaries of the subdistrict to authorize the issuance of bonds by the subdistrict or by the district on behalf of the subdistrict in accordance with this chapter and Sections 49.106 and 51.411.

(c) Bonds authorized at an election within the subdistrict may only be repaid from ad valorem taxes imposed on all taxable property within the boundaries of the subdistrict or income, increment, and revenue derived from the ownership or operation of any part of the assets of the subdistrict or any combination of those sources. The district is not liable for the repayment of those bonds except as provided by this subsection.

(d) A subdistrict may issue refunding bonds as provided by Section 51A.002.

(e) Bonds issued by a subdistrict or by the district on behalf of the subdistrict are investment securities under Chapter 2257, Government Code, are public securities under Chapter 1201, Government Code, and are subject to the general laws of this state relating to

bonds of a water control and improvement district to the extent that those general laws are not inconsistent with this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.004(a), eff. September 1, 2015.

Sec. 51A.005. EXCLUSION OF TERRITORY WITHIN SUBDISTRICT. (a) A subdistrict board shall call an election within the subdistrict to coincide with the confirmation election under Section 51A.003(e) at which a proposition shall be submitted to the voters to authorize the subdistrict to enter into a contract with the district under which the subdistrict would impose an unlimited ad valorem tax on all taxable property within the subdistrict to repay to the district a portion of the district's total outstanding indebtedness. That portion would be calculated by multiplying the total outstanding indebtedness of the district on the date of the first payment under the proposed contract by a percentage equal to the proportion of the total taxable property within the district borne by the total taxable property within the subdistrict, as of the date of the preceding tax roll.

(b) The ballots in the election under Subsection (a) shall be printed to provide for voting for or against the following proposition: "The execution of a contract and the imposition of taxes to pay for the contract." A copy of the proposed contract shall be available at the office of the district for inspection before the election. The election shall otherwise be conducted in conformity with the provisions of Chapter 51 relating to elections to approve a tax-supported contract with the United States.

(c) If the proposition is approved at the election under Subsection (a), the board of the district shall, on receipt of a petition that conforms substantially to Section 49.305 and describes the territory within the subdistrict, conduct a hearing not later than the 30th day after the date of receipt of the petition on the exclusion of the subdistrict from the boundaries of the district.

(d) If the subdistrict board establishes at the hearing that the subdistrict has been created, has authorized the issuance of bonds by the subdistrict or by the district on behalf of the subdistrict, has authorized the tax-supported contract payment, and has elected a permanent board of directors, the board of the district

shall, at the conclusion of the hearing, enter an order approving the contract supported by a tax within the subdistrict and excluding all land within the subdistrict from the boundaries of the district contingent only on the completion of the refunding bond issue.

(e) Refunding bonds may be issued by a district to implement the exclusion of land within a subdistrict under any terms that are considered advisable by the board of the district and are only subject to the interest rate limitations imposed by the constitution and laws of this state. If refunding bonds are not issued by a district on or before the 30th day after the date of the hearing at which the subdistrict establishes all items in Subsection (d), all property within the subdistrict is considered excluded from the boundaries of the district on the expiration of the 30th day after the date of the hearing.

(f) Any subdistrict located within a service area as defined by a United States Environmental Protection Agency grant used by a district to expand its wastewater treatment plant shall obtain wastewater treatment services to the extent of capacity provided with the United States Environmental Protection Agency grant proceeds from the wastewater treatment plant constructed with the prior proceeds of the United States Environmental Protection Agency grant in accordance with the terms of a contract approved by the governing bodies of the subdistrict and the district.

(g) To reduce the cost of services to its residents and taxpayers, the subdistrict shall use the employees, consultants, staff, and services of the district and reimburse the district for all costs of furnishing those services. The services may be terminated for good cause. The subdistrict and the district shall submit to arbitration any dispute between the subdistrict and the district.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.004(a), eff. September 1, 2015.

Sec. 51A.006. WATER AND SEWER RATES. A district shall establish rates for all services to subdistricts after the exclusion of the subdistricts from the boundaries of the district. The rates may not exceed 150 percent of the rates for similar services for residents of the district.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.004(a), eff. September 1, 2015.

Sec. 51A.007. ELECTION DATES. An election authorized by this chapter may be held on any day of the year other than a general election date and is not limited to the uniform election dates established by Section 41.001(a), Election Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.004(a), eff. September 1, 2015.

Sec. 51A.008. PUBLIC PURPOSE. This chapter facilitates and advances the conservation and reclamation of the natural resources of this state by permitting certain water control and improvement districts to extend fresh water supply and distribution facilities, storm water and flood control facilities, and sanitary sewage collection and treatment facilities into areas that have previously not received such facilities. The reclamation of land for development and use as residential neighborhoods will be implemented and the health, welfare, and safety of residents of those neighborhoods will be additionally protected.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.004(a), eff. September 1, 2015.

Sec. 51A.009. CONSTRUCTION. The powers granted by this chapter to districts shall be broadly interpreted and liberally construed to effect the legislative intent and the purposes of this chapter and not as a limitation of powers.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.004(a), eff. September 1, 2015.

CHAPTER 52. UNDERGROUND WATER CONSERVATION DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 52.005. APPLICABILITY TO UNDERGROUND WATER CONSERVATION DISTRICTS GENERALLY. (a) , (b) Repealed by Acts 1995, 74th Leg.,

ch. 933, Sec. 6, eff. Sept. 1, 1995.

(c) Sections 49.052, 49.216, and 49.301 through 49.308 do not apply to districts governed by this chapter.

Added by Acts 1989, 71st Leg., ch. 936, Sec. 2, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 701, Sec. 2, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch.715, Sec. 8, eff. Sept. 1, 1995.

CHAPTER 53. FRESH WATER SUPPLY DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. DEFINITIONS. In this chapter:

(1) "District" means a fresh water supply district established under this chapter.

(2) "Board" means the board of supervisors of a district.

(3) "Improvement" means a facility for conserving, transporting, or distributing fresh water.

Acts 1971, 62nd Leg., p. 397, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER B. CREATING AND DIVIDING A DISTRICT

Sec. 53.011. CREATING A DISTRICT. A district is created by petition, hearing, and election.

Acts 1971, 62nd Leg., p. 397, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.012. CITIES AND TOWNS. Cities and towns are includable in a district.

Acts 1971, 62nd Leg., p. 397, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.013. PRESENTING PETITION. A person may present a petition requesting creation of a district to the commissioners court of the county which includes the land in the proposed district. If the commissioners court is not in session, the petition may be presented to the county judge.

Acts 1971, 62nd Leg., p. 397, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.014. REQUISITES OF PETITION. To be sufficient, the petition must:

(1) be signed by a majority of the persons who hold title to land in the proposed district that represents a total value of more than 50 percent of the value of all the land in the proposed district as indicated by the appraisal roll of the appraisal district in which the proposed district is located. If there are more than 50 persons holding title to land in the proposed district, the petition is sufficient if signed by 50 of those persons; and

(2) state:

(A) the boundaries of the proposed district;

(B) the general nature of the projects proposed to be done;

(C) the necessity for the proposed district;

(D) the feasibility of the proposed district; and

(E) the proposed name for the district, which must include the name of the county in which it is situated.

Acts 1971, 62nd Leg., p. 397, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 743 (H.B. 2983), Sec. 1, eff. September 1, 2007.

Sec. 53.015. DEPOSIT. The person who presents the petition shall at the same time pay a deposit of $100 to the county clerk. The clerk shall pay out the deposit on vouchers approved by the county judge for all expenses necessary for the hearing and the election for the creation of the district. After the election, the clerk shall return any portion of the deposit which is left to the petitioners or their attorney.

Acts 1971, 62nd Leg., p. 397, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.016. TIME AND PLACE OF HEARING. The commissioners court or county judge shall immediately set a time and place for a hearing on the petition by the commissioners court. The hearing must be held during the period beginning on the 15th day and ending with

the 30th day after the day the petition is presented.

Acts 1971, 62nd Leg., p. 398, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.017. NOTICE. (a) The county clerk shall issue notice of the time and place of the hearing, and in the notice he shall include a statement that any person is entitled to appear at the hearing, challenge the form and allegations of the petition, and contest the proposition that the projects to be undertaken by the proposed district would benefit the land inside its boundaries.

(b) The county clerk may deliver the notice to any adult who is willing to execute it as directed by Section 53.018 of this code.

Acts 1971, 62nd Leg., p. 398, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.018. POSTING NOTICE. (a) The person receiving the notice shall post a copy of it at the courthouse door and a copy at each of four different places inside the proposed district. He shall post the notice for at least the 10 days that immediately precede the day set for the hearing.

(b) The person posting the notice shall swear in writing, before some officer who is authorized by law to administer oaths, that he posted the notice according to the provisions of Subsection (a) of this section. The sworn written statement is conclusive of the facts sworn to.

Acts 1971, 62nd Leg., p. 398, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.019. HEARING POWERS. (a) The commissioners court shall have jurisdiction to determine all issues pertaining to the sufficiency of the petition and shall allow any interested person to appear before it in person or by attorney to offer testimony relative to the sufficiency of the petition.

(b) The commissioners court may adjourn the hearing from day to day as is necessary to complete the hearing.

(c) The commissioners court may make all orders necessary to determine the matters before it.

Acts 1971, 62nd Leg., p. 398, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.020. TEMPORARY SUPERVISORS; QUALIFICATIONS. (a) If the commissioners court grants a petition presented under Section 53.013, the court shall appoint five temporary supervisors to serve on the board of the district until permanent supervisors are elected.

(b) A temporary supervisor appointed under Subsection (a) shall execute a bond as required under Section 49.055 and take the oath of office.

(c) After the commissioners court appoints five temporary supervisors under Subsection (a), the temporary supervisors shall meet and organize.

Added by Acts 1997, 75th Leg., ch. 1070, Sec. 26, eff. Sept. 1, 1997.

Sec. 53.021. OFFICERS TO BE ELECTED. In the election, five supervisors are elected.

Acts 1971, 62nd Leg., p. 399, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 1423, Sec. 28, eff. June 17, 2001.

Sec. 53.029. DIVISION OF OR ASSUMPTION OF AUTHORITY BY CERTAIN DISTRICTS. (a) This section applies to a district located in a county that:

(1) has a population of 1.3 million or more and in which a municipality with a population of more than one million is primarily located; or

(2) is adjacent to a county having the characteristics described by Subdivision (1).

(b) A district covered by this section may be divided into two new districts if it has no outstanding bonded debt and is not levying ad valorem taxes. The division procedure is prescribed by Sections 53.030 to 53.041 of this code.

(c) The board of a district covered by this section may order an election to be held in the district to determine whether the district should assume the rights, authority, privileges, and functions of a road district under Article III, Section 52(b)(3), of

the Texas Constitution. The election shall be ordered, conducted, and the results canvassed in the manner provided by the applicable provisions of this chapter and the Election Code. The ballots for the election shall be printed to provide for voting for or against: The assumption by the _____ Fresh Water Supply District of the rights, authority, privileges, and functions of a road district under Article III, Section 52(b)(3), of the Texas Constitution. If a majority of the persons voting in the election vote in favor of the proposition, the district shall assume the rights, authority, privileges, and functions of a road district operating under Article III, Section 52(b)(3), of the Texas Constitution, Chapter 257, Transportation Code, and other general laws of this state relating to road districts.

(d) A district operating as a road district may not issue bonds or otherwise lend its credit for road district purposes except on approval of not less than two-thirds of the qualified voters of the district voting at an election called and held for that purpose. The total amount of bonds, notes, and other obligations of the district issued or incurred under this subsection may not exceed one-fourth of the assessed valuation of real property in the district.

(e) A district that has adopted the rights, authority, privileges, and functions of a road district in the manner provided by Subsection (c) may, following approval of a construction contract by the district's governing body, reimburse expenditures as provided by Sections 257.003(a) and (b), Transportation Code, without any additional approval under Section 257.003, Transportation Code.

Acts 1971, 62nd Leg., p. 400, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 598, ch. 237, Sec. 139, eff. Sept. 1, 1981; Acts 1987, 70th Leg., ch. 122, Sec. 1, eff. May 19, 1987; Acts 1991, 72nd Leg., ch. 597, Sec. 110, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 30.277, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 669, Sec. 146, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 248, Sec. 26, eff. June 18, 2003.

Sec. 53.030. ORDERING ELECTION. The board may order a special election on its own motion or on presentation of a petition signed by 20 or more qualified property taxpaying electors of the district.

Acts 1971, 62nd Leg., p. 400, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.031. ORDER: METES AND BOUNDS. The petition for election and the order and notices of election must set forth the metes and bounds of the two proposed new districts.

Acts 1971, 62nd Leg., p. 400, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.032. ORDER: TIME OF ELECTION. In the order the board shall set the time for the election, which must be held before the expiration of the 30th day after the day the order is made.

Acts 1971, 62nd Leg., p. 400, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.033. ORDER: ELECTION OF SUPERVISORS. The board shall include in the order a statement that if the election results in division of the district, the two new districts will each be governed by a board of five supervisors elected in the same election.

Acts 1971, 62nd Leg., p. 401, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.034. ORDER: DIVISION OF PROPERTY AND MONEY. In the election order the board shall state in a general way how the properties and any money on hand will be divided between the two new districts if the election is in favor of dividing into two districts. The basis set by the board is controlling.

Acts 1971, 62nd Leg., p. 401, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.040. ELECTED SUPERVISORS TAKE OFFICE. If the election results in a division of the district, the five candidates receiving the most votes in each new district shall be declared elected. They shall immediately qualify in accordance with Section 49.055.

Acts 1971, 62nd Leg., p. 402, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 11, eff. Sept. 1, 1995.

Sec. 53.041. COMPLETING MEMBERSHIP OF THE BOARD. If no supervisors are elected, or if a full board is not elected, the commissioners court shall appoint the needed members of the board.

Acts 1971, 62nd Leg., p. 402, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.042. NEWLY ELECTED SUPERVISORS--TERM OF OFFICE. The newly elected supervisors hold office until the new district's next supervisors election.

Acts 1971, 62nd Leg., p. 402, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 12, eff. Sept. 1, 1995.

Sec. 53.043. POWERS OF NEW DISTRICT. A district created by the division of an existing district into two districts has all the powers and duties given by this chapter to any other district.

Acts 1971, 62nd Leg., p. 402, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 53.061. CREATION OF DISTRICT. A commissioners court may create one or more fresh water supply districts in its county by following the procedure prescribed in Sections 53.011-53.029 of this code.

Acts 1971, 62nd Leg., p. 402, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.062. BOARD OF SUPERVISORS. A district created under this chapter is governed by a board of five elected supervisors.

Acts 1971, 62nd Leg., p. 402, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 2665, ch. 720, Sec. 2, eff. Aug. 31, 1981; Acts 1995, 74th Leg., ch. 715, Sec. 13, eff. Sept. 1, 1995.

Sec. 53.063. SUPERVISOR'S QUALIFICATIONS. (a) Except as provided by Subsection (b), to be qualified for election as a supervisor:

(1) a person must be:

(A) a resident of this state;

(B) the owner of taxable property in the district; and

(C) at least 18 years of age; or

(2) a person must be a registered voter of the district.

(b) To be qualified for election as a supervisor of a district located wholly or partly in Denton County, a person must be a registered voter of the district.

Acts 1971, 62nd Leg., p. 402, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1999, 76th Leg., ch. 1354, Sec. 13, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 912 (H.B. 2984), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 393 (S.B. 512), Sec. 1, eff. September 1, 2011.

Sec. 53.072. ASSESSOR AND COLLECTOR'S QUALIFICATIONS. To be qualified for election as assessor and collector, a person must be a resident of the district and a qualified voter in the district.

Acts 1971, 62nd Leg., p. 404, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.073. ASSESSOR AND COLLECTOR'S TERM OF OFFICE. The first elected assessor and collector holds office until the next general election of officers following his election. The succeeding assessor and collectors hold office for terms of two years. The board shall fill any vacancy in the office of assessor and collector by appointment for the unexpired term.

Acts 1971, 62nd Leg., p. 404, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.075. ASSESSOR AND COLLECTOR'S SALARY. The board shall fix the salary of the assessor and collector at not more than $10,000 a year.

Acts 1971, 62nd Leg., p. 404, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1985, 69th Leg., ch. 461, Sec. 1, eff. Aug. 26, 1985.

Sec. 53.088. STATUS OF THE DISTRICT. A district is:

(1) a governmental agency;

(2) a body politic and corporate; and

(3) a defined district within the meaning of Article XVI, Section 59, of the Texas Constitution.

Acts 1971, 62nd Leg., p. 406, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 14, eff. Sept. 1, 1995.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 53.101. PURPOSE OF DISTRICT. Fresh water supply districts may be created to conserve, transport, and distribute fresh water from any sources for domestic and commercial purposes.

Acts 1971, 62nd Leg., p. 407, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.102. CONSTITUTIONAL BASIS. The constitutional basis for this chapter is Article XVI, Section 59, of the Texas Constitution.

Acts 1971, 62nd Leg., p. 407, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.103. GOVERNMENTAL POWERS OF DISTRICT. A district has the powers of government and authority to exercise the rights, privileges, and functions given to it by this chapter or by any other state law.

Acts 1971, 62nd Leg., p. 407, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.104. AUTHORITY TO ACQUIRE WATER RIGHTS. A district may acquire water rights and privileges in any way that an individual or corporation may acquire them. A district may hold water rights and privileges, either by gift, purchase, devise, appropriation, or by other means.

Acts 1971, 62nd Leg., p. 407, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.105. CONTRACTS WITH OTHER DISTRICTS OR WATER SUPPLY CORPORATIONS. (a) In this section, "authorized water district" means a district created under Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution.

(b) A district may enter into a contract with an authorized water district or a water supply corporation that authorizes the district to acquire, through the issuance of debt or other means, and convey to the authorized water district or water supply corporation all or part of a water supply, treatment, or distribution system, a sanitary sewage collection or treatment system, or works or improvements necessary for drainage of land in the district. The contract may:

(1) permit the district to rehabilitate, repair, maintain, improve, enlarge, or extend any existing facilities to be conveyed to the authorized water district or water supply corporation; or

(2) require the district to pay impact fees or other fees to the authorized water district or water supply corporation for capacity or service in facilities of the authorized water district or water supply corporation.

(c) The contract entered into under Subsection (b) may authorize the authorized water district or water supply corporation to purchase the water, sewer, or drainage system from the district through periodic payments to the district in amounts that, combined with the net income of the district, are sufficient for the district to pay the principal of and interest on any bonds of the district. The contract may provide that the payments due under this subsection:

(1) are payable from and secured by a pledge of all or part of the revenue of the water, sewer, or drainage system;

(2) are payable from taxes to be imposed by the authorized water district; or

(3) are payable from a combination of the revenue and taxes

described by Subdivisions (1) and (2).

(d) The contract may authorize the authorized water district or water supply corporation to operate the water, sewer, or drainage system conveyed by the district under Subsection (b).

(e) The contract may require the district to make available to the authorized water district or water supply corporation all or part of the raw or treated water to be used for the provision of services in the district.

(f) If the contract provides for the water, sewer, or drainage system to be conveyed to the authorized water district or water supply corporation on or after the completion of construction, the authorized water district or water supply corporation may pay the district to provide water, sewer, or drainage services to residents of the authorized water district or customers of the water supply corporation.

(g) The contract may authorize the district to convey to the authorized water district or water supply corporation at no cost a water, sewer, or drainage system and require the authorized water district or water supply corporation to use all or part of those systems to provide retail service to customers in the district in accordance with the laws of this state and any certificate of convenience and necessity of the authorized water district or water supply corporation.

(h) A contract under this section must be approved by a majority vote of the governing bodies of the district and the authorized water district or water supply corporation. If Section 52, Article III, or Section 59, Article XVI, Texas Constitution, requires that qualified voters of the district approve the imposition of a tax by the district or the authorized water district, the district or the authorized water district shall call an election for that purpose.

Added by Acts 2007, 80th Leg., R.S., Ch. 635 (H.B. 713), Sec. 1, eff. September 1, 2007.

Sec. 53.107. DISTRIBUTION OF WATER AND USE OF REVENUES OBTAINED FROM DISTRIBUTION OF WATER. (a) The board shall:

(1) prescribe the terms on which water will be furnished;

(2) fix the rate to be paid by users of water from the

district; and

(3) make rules and regulations governing the distribution and use of water.

(b) The board shall apply any revenue obtained from the sale of water to operation and maintenance expenses. Any revenue left after paying these expenses shall be used to pay interest on bonds and other indebtedness incurred by the district with the remainder to be placed in the sinking fund.

Acts 1971, 62nd Leg., p. 408, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.112. USE OF ROADWAYS. In order to secure fresh water, a district may construct necessary levees, bridges, and other improvements across or under:

(1) railroad embankments, tracks, or rights-of-way;

(2) public or private roads and their rights-of-way;

(3) rivers;

(4) improvements of other districts and their rights-of-way; and

(5) other improvements and their rights-of-way.

Acts 1971, 62nd Leg., p. 409, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.113. CONSTRUCTING IMPROVEMENTS ON RAILROAD WAYS. (a) Before the district may construct an improvement across or under any railroad property, the district must notify the railroad authorities of the district's intention to construct the improvement if the railroad does not do so.

(b) The railroad has 30 days from the day it receives the notice in which to decide whether or not to build the improvement itself, at its own expense and according to its own plans.

(c) If the railroad builds the improvement, it must do so in a manner which is satisfactory to the district.

Acts 1971, 62nd Leg., p. 409, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.115. DUTIES OF ENGINEER. (a) The engineer shall make maps and profiles of the district improvements, including any part of

the improvements which extends beyond the boundaries of the district.

(b) The engineer may adopt other correct maps, plats, and surveys.

(c) The engineer shall perform other duties required of him by the board.

Acts 1971, 62nd Leg., p. 409, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.121. CONSTRUCTING SANITARY SEWER SYSTEMS. (a) A district may purchase, construct, acquire, own, operate, repair, improve, and extend sanitary sewer systems to control wastes, if no other public sanitary sewer system is available for the area inside the fresh water supply district.

(b) Before a district may exercise the power given by this section, it must hold an election in the same manner as provided in this chapter for other elections of the district.

Acts 1971, 62nd Leg., p. 411, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.122. REGULATING SANITARY CONDITIONS INSIDE THE DISTRICT. (a) A district may regulate the installation, maintenance, and operation of plumbing fixtures and facilities inside the district for the purpose of:

(1) maintaining safe and sanitary conditions; and

(2) protecting the lives, health, and welfare of the people in the district.

(b) The board may set a reasonable penalty for violating any rule authorized by Subsection (a) of this section, within these limits:

(1) a fine of not more than $200;

(2) confinement in the county jail for not more than 30 days; or

(3) both the fine and the jail sentence.

(c) The penalty set by the supervisors is in addition to other penalties provided by law. A court of proper jurisdiction in the county where the district's principal office is located may enforce the penalties.

(d) A penalty for the violation of a rule is not valid unless a brief, substantial statement of the rule and the penalty is published

once a week for two consecutive weeks in a newspaper of general circulation in the area in which the district is located. A penalty takes effect seven days after the second publication.

(e) The courts shall take judicial notice of the rules made by a district under this section.

Acts 1971, 62nd Leg., p. 411, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.126. EFFECT OF ENUMERATION OF POWERS. No statement of specific powers in this chapter is a limitation on the general powers given by this chapter, unless it is specifically so stated.

Acts 1971, 62nd Leg., p. 412, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER E. GENERAL FISCAL PROVISIONS

Sec. 53.145. PAYMENT OF ELECTION EXPENSES. The board shall pay all expenses of calling and holding each election, except the creation election, from any district funds except the interest and sinking fund.

Acts 1971, 62nd Leg., p. 413, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.146. MAINTENANCE FUND. (a) A district shall have a maintenance and operating fund. The fund consists of all money collected by assessment or otherwise for maintaining and operating the property of the district.

(b) The board shall use the money in this fund to pay:

(1) all salaries of officers and employees, other than that of the assessor and collector; and

(2) operating expenses.

Acts 1971, 62nd Leg., p. 413, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.150. PAYMENT OF DAMAGES. The district shall pay out of any funds or property of the district, except the interest and sinking fund:

(1) compensation and damages adjudicated in condemnation

proceedings; and

(2) compensation for damage done to the property of any person or corporation in the construction and maintenance of improvements.

Acts 1971, 62nd Leg., p. 413, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.151. COST OF SANITARY SEWER SYSTEMS. (a) The board may pay the cost of acquiring and repairing sanitary sewer systems from:

(1) the proceeds of sale of bonds or other obligations issued by the district;

(2) revenue obtained from maintenance taxes; or

(3) revenue from the operation of the district's improvements.

(b) The board may pay the cost of maintaining and operating sanitary sewer systems with funds obtained from maintenance taxes or from operating revenues. The board may not pay these costs with borrowed money.

Acts 1971, 62nd Leg., p. 414, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER F. BOND AND TAX PROVISIONS

Sec. 53.171. POWER TO ISSUE BONDS. (a) A district may issue bonds to secure indebtedness for any purpose authorized by this chapter, Chapter 49, or other applicable laws.

(b) A district may not issue tax bonds or incur any debt which is to be paid with tax revenue unless an election is first held in the district and the proposition is approved by a majority of the electors of the district who vote in the election.

Acts 1971, 62nd Leg., p. 414, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 635 (H.B. 713), Sec. 2, eff. September 1, 2007.

Sec. 53.172. ORDERING BOND ELECTION. After the creation of a district and the qualification of the supervisors, the board may

order an election in the district to authorize a bond issue. At this election, the board shall submit only a proposition authorizing the issuance of bonds and the levy of a tax to pay the bonds. The ballots shall be printed to allow for voting for or against the proposition: "The issuance of bonds and the levy of taxes to pay the bonds."

Acts 1971, 62nd Leg., p. 414, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 15, eff. Sept. 1, 1995.

Sec. 53.176. ISSUING BONDS. (a) After declaring the result of the election, the board shall make and enter an order in the minutes directing the issuing of bonds sufficient to pay for the proposed improvements. The board may not issue bonds in an amount greater than that specified in the order and notice of election.

(b) Subchapter L, of Chapter 55 of this code, providing for the issuing, denominations, rate of interest, manner and conditions of payment, and maturity dates of water improvement district bonds, apply to bonds of a fresh water supply district.

Acts 1971, 62nd Leg., p. 415, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.177. APPROVING BONDS. (a) Before the board offers bonds for sale, it shall send to the attorney general a certified copy of all proceedings relating to organizing the district and issuing the bonds. They shall also provide other relevant information he requires.

(b) The attorney general shall carefully examine the bonds in connection with the record and the constitution and laws of this state governing the issuance of bonds. The attorney general shall certify the bonds if he finds that they conform to the record and the constitution and laws of this state and that they are valid and binding obligations of the district.

Acts 1971, 62nd Leg., p. 415, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.178. REGISTERING BONDS. When the attorney general

approves the bonds, the comptroller shall register them in a book kept for that purpose. The comptroller shall record the certificate of the attorney general as to the bonds' validity. The bonds are then prima facie valid in any action, suit, or proceeding. In a suit to enforce collection of the bonds and interest on the bonds, the only defense against the validity of the bonds is forgery or fraud.

Acts 1971, 62nd Leg., p. 415, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.179. SELLING BONDS. After the bonds are registered, the board shall sell them on the best terms and for the best price possible. The board shall promptly pay to the district depository the money received from the sale of the bonds. The district depository shall hold the money for the district.

Acts 1971, 62nd Leg., p. 415, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.180. RECORDING OF BOND ISSUES. (a) After the bonds are issued, the board shall deliver a well-bound book to the county treasurer, who shall keep in the book a list of:

(1) all bonds which have been issued;
(2) their manner of payment;
(3) the amount of each bond;
(4) the rate of interest on each bond;
(5) the date of issuing each bond;
(6) the date when each bond is due;
(7) the place where each bond is payable;
(8) the amount received for each bond; and
(9) the tax levy to pay interest on and redeem the bonds.

(b) The county treasurer shall keep the books open at all times for inspection by any taxpayer or bondholder. When a person pays for a bond, the treasurer shall enter the payment in the book. The treasurer is entitled to receive for his services the same fee allowed by law to the county clerk for recording deeds.

Acts 1971, 62nd Leg., p. 416, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.181. PAYING BONDS AND INTEREST. At the time for paying

interest or for redeeming the bonds, the district depository shall receive and cancel any interest coupons paid or any bonds redeemed. When the board receives an interest coupon or a bond, it shall credit the account of the depository with the amount received. The board shall then cancel and destroy the bond or coupon.

Acts 1971, 62nd Leg., p. 416, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.182. BONDS PAYABLE FROM REVENUES AND AD VALOREM TAXES. (a) For the purpose of constructing, purchasing, repairing, improving, and extending authorized improvements, a district may issue bonds payable solely from the revenues of:

(1) the operation of the district's water system, less the reasonable cost of maintaining and operating the system; or

(2) the operation of the district's sanitary sewer system, less the reasonable cost of maintaining and operating the system; or

(3) both the water system and the sanitary sewer system.

(b) The district may also issue bonds for the purposes set out in this section, payable both from ad valorem taxes and the revenues of:

(1) its water system; or

(2) its sanitary sewer system; or

(3) both its water system and sanitary sewer system.

(c) If the district issues combination tax and revenue bonds, it shall levy, assess, and collect ad valorem taxes until the net revenues from the operation of the water system or the sanitary sewer system, together with the revenue from taxes, have accumulated a surplus in the sinking fund at least equal to the principal of and interest on the bonds scheduled to accrue in the next year. When this accumulation is completed, the board may reduce the tax levy to a rate that will produce at least 25 percent of the principal and interest requirements for each of the next succeeding years. When actual experience of three successive years demonstrates that the net revenues are adequate to pay the principal of and the interest on the bonds as they mature, the board may discontinue the tax until it becomes necessary to levy the tax again to avoid default in paying the bonds and interest.

Acts 1971, 62nd Leg., p. 416, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.183. ELECTION REQUIRED. (a) A district may not issue bonds as authorized in Section 53.182 of this code unless an election is first held in the district and the proposition is approved by a majority of the electors of the district who vote in the election.

(b) If the election is held to authorize revenue bonds only, the board shall have the ballots printed to allow for voting for or against the proposition: "The issuance of bonds and the pledge of net revenues for the payment of the bonds."

(c) If the election is held to authorize combination tax and revenue bonds, the board shall have the ballots printed to allow for voting for or against the proposition: "The issuance of bonds to be paid for from an adequate pledge of net revenues and levy of ad valorem taxes."

(d) Except as provided in this section, the provisions of Sections 53.172-53.175 of this code, relating to tax bond elections, apply to elections held under this section.

Acts 1971, 62nd Leg., p. 417, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.184. REFUNDING BONDS. (a) With the consent of the holders, a district may refund outstanding bonds by issuing new coupon bonds in their place.

(b) Interest is shown by coupons attached to the bonds. The board may pay the interest on the bonds annually or semiannually.

(c) The board may pay the refunding bonds serially or in any other manner it chooses, but it shall pay the bonds not later than 40 years from the date the bonds are issued.

(d) The board shall issue the bonds in denominations of $100 or a multiple of $100. The board shall levy a tax sufficient to meet the payment of principal of and interest on the refunding bonds before the bonds are delivered. The refunding of bonds does not affect any taxes already due.

(e) The board shall issue refunding bonds in the manner provided for other district bonds. The board shall deduct any sum on hand to the credit of any sinking fund account in ascertaining the amount of refunding bonds to be issued, and it shall apply the money to the payment of the outstanding bonds.

(f) The board shall not issue refunding bonds until they are approved by the attorney general and registered by the comptroller.

The comptroller shall not register the refunding bonds until the old bonds being replaced are presented to him for cancellation. After the comptroller registers the new bonds, he shall cancel the old bonds and interest coupons and deliver the new bonds to the proper bondholders. The district may present the old bonds for cancellation in installments, and the comptroller may register and deliver a like amount of the new bonds.

Acts 1971, 62nd Leg., p. 417, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.185. RATES AND CHARGES. If the board issues revenue bonds or combination tax and revenue bonds, the board, at the time it authorizes the bonds, shall fix rates and charges for the use of the facilities or the services rendered in an amount which, together with any tax which is levied, will assure the prompt payment of the principal of and interest on the bonds as they mature.

Acts 1971, 62nd Leg., p. 417, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.186. INTEREST AND SINKING FUND. (a) A district shall have an interest and sinking fund. The board shall credit to this fund all taxes collected for the payment of interest or redemption of district bonds.

(b) The board shall use money in this fund only:

(1) to pay interest on district bonds;

(2) to cancel and surrender district bonds; and

(3) to pay the expenses of assessing and collecting the taxes.

Acts 1971, 62nd Leg., p. 418, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.187. INVESTMENT OF SINKING FUND. The board may invest the district's sinking funds in county, municipal, district, or other bonds in which other sinking funds may by law be invested. The board may also invest the sinking funds in bonds of the series to which the funds apply, if the bonds are offered for redemption before maturity on terms the board deems advantageous to the district.

Acts 1971, 62nd Leg., p. 418, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.188. LEVY OF TAXES. After the district has issued bonds, the board shall levy taxes on all property in the district, whether real, personal, or mixed. The board shall levy the taxes based on the full value of each piece of property. The board shall levy the taxes in an amount which is enough to pay the interest on the bonds and to create a sinking fund sufficient to redeem and discharge the bonds when they mature. The board shall levy taxes annually for this purpose as long as the bonds are outstanding.

Acts 1971, 62nd Leg., p. 418, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.189. ASSESSOR AND COLLECTOR--OFFICE. The assessor and collector shall maintain an office.

Acts 1971, 62nd Leg., p. 418, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 53.190. SUBJECT TO RULES OF BOARD. The assessor and collector is subject to the rules and regulations of the board in the same manner as provided by law for assessors and collectors of water improvement districts.

Acts 1971, 62nd Leg., p. 418, ch. 58, Sec. 1, eff. Aug. 30, 1971.

CHAPTER 54. MUNICIPAL UTILITY DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 54.001. DEFINITIONS. In this chapter:

(1) "District" means a municipal utility district operating under this chapter.

(2) "Board" means the board of directors of a district.

(3) "Director" means a member of the board of directors of a district.

(4) "Commission" means the Texas Natural Resource Conservation Commission.

(5) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(6) "Public agency" means any city, the United States, the State of Texas, and any district or authority created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution, including any river authority, or any other political subdivision or governmental agency of the United States or the State of Texas.

(7) "City" means any incorporated city, town, or village of the State of Texas whether operating under general law or under its home-rule charter.

(8) "Extraterritorial jurisdiction" means the extraterritorial jurisdiction of a city as defined in Article I, Chapter 160, Acts of the 58th Legislature, 1963, as amended (Article 970a, Vernon's Texas Civil Statutes).

(9) "Sole expense" means the actual cost of the relocation, raising, rerouting, or changing grade or alteration of construction and providing comparable replacement without enhancing the facilities after deducting from it the net salvage value derived from the old facility.

Added by Acts 1971, 62nd Leg., p. 774, ch. 84, Sec. 1. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.140, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.077, eff. Aug. 12, 1991.

SUBCHAPTER B. CREATION OR EXPANSION OF DISTRICT; CONVERSION OF DISTRICT

Sec. 54.011. CREATION OF DISTRICT. A municipal utility district may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution.

Added by Acts 1971, 62nd Leg., p. 774, ch. 84, Sec. 1.

Sec. 54.012. PURPOSES OF A DISTRICT. A district shall be created for the following purposes:

(1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;

(2) the reclamation and irrigation of its arid, semiarid,

and other land needing irrigation;

(3) the reclamation and drainage of its overflowed land and other land needing drainage;

(4) the conservation and development of its forests, water, and hydroelectric power;

(5) the navigation of its inland and coastal water;

(6) the control, abatement, and change of any shortage or harmful excess of water;

(7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and

(8) the preservation of all natural resources of the state.

Added by Acts 1971, 62nd Leg., p. 775, ch. 84, Sec. 1.

Sec. 54.013. COMPOSITION OF DISTRICT. (a) A district may include the area in all or part of any county or counties including all or part of any cities and other public agencies.

(b) The land composing a district need not be in one body, but may consist of separate bodies of land separated by land which is not included in the district.

Added by Acts 1971, 62nd Leg., p. 775, ch. 84, Sec. 1.

Sec. 54.014. PETITION. When it is proposed to create a district, a petition requesting creation shall be filed with the commission. The petition shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district.

Added by Acts 1971, 62nd Leg., p. 775, ch. 84, Sec. 1. Amended by Acts 2001, 77th Leg., ch. 1423, Sec. 29, eff. June 17, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 761 (S.B. 1987), Sec. 5, eff. June 12, 2017.

Acts 2017, 85th Leg., R.S., Ch. 965 (S.B. 2014), Sec. 4, eff. September 1, 2017.

Sec. 54.015. CONTENTS OF PETITION. The petition shall:

(1) describe the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area;

(2) state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition; and

(3) include a name of the district which shall be generally descriptive of the locale of the district followed by the words Municipal Utility District, or if a district is located within one county, it may be designated "_____ County Municipal Utility District No. _____." (Insert the name of the county and proper consecutive number.) The proposed district shall not have the same name as any other district in the same county.

Added by Acts 1971, 62nd Leg., p. 775, ch. 84, Sec. 1.

Sec. 54.016. CONSENT OF CITY. (a) No land within the corporate limits of a city or within the extraterritorial jurisdiction of a city, shall be included in a district unless the city grants its written consent, by resolution or ordinance, to the inclusion of the land within the district in accordance with Section 42.042, Local Government Code, and this section. The request to a city for its written consent to the creation of a district, shall be signed by a majority in value of the holders of title of the land within the proposed district as indicated by the county tax rolls. A petition for the written consent of a city to the inclusion of land within a district shall describe the boundaries of the land to be included in the district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, and state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition. If, at the time a petition is filed with a city for creation of a district, the district proposes to connect to a city's water or sewer system or proposes to contract with a regional water and wastewater provider which has been designated as such by the commission as of the date such petition is filed, to which the city has made a capital contribution for the water and wastewater facilities serving the area, the proposed district shall be designated as a "city service district." If such

proposed district does not meet the criteria for a city service district at the time the petition seeking creation is filed, such district shall be designated as a "noncity service district." The city's consent shall not place any restrictions or conditions on the creation of a noncity service district as defined by this chapter other than those expressly provided in Subsection (e) of this section and shall specifically not limit the amounts of the district's bonds. A city may not require annexation as a consent to creation of any district. A city shall not refuse to approve a district bond issue for any reason except that the district is not in compliance with valid consent requirements applicable to the district. If a city grants its written consent without the concurrence of the applicant to the creation of a noncity service district containing conditions or restrictions that the petitioning land owner or owners reasonably believe exceed the city's powers, such land owner or owners may petition the commission to create the district and to modify the conditions and restrictions of the city's consent. The commission may declare any provision of the consent to be null and void. The commission may approve the creation of a district that includes any portion of the land covered by the city's consent to creation of the district. The legislature may create and may validate the creation of a district that includes any portion of the land covered by the city's consent to the creation of the district.

(b) If the governing body of a city fails or refuses to grant permission for the inclusion of land within its extraterritorial jurisdiction in a district, including a district created by a special act of the legislature, within 90 days after receipt of a written request, a majority of the electors in the area proposed to be included in the district or the owner or owners of 50 percent or more of the land to be included may petition the governing body of the city and request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district.

(c) If the governing body of the city and a majority of the electors or the owner or owners of 50 percent or more of the land to be included in the district fail to execute a mutually agreeable contract providing for the water or sanitary sewer service requested within 120 days after receipt of the petition, the failure shall constitute authorization for the inclusion of the land in the district under the provisions of this section. Authorization for the inclusion of such land within the district under the provisions of

this section shall mean only authorization to initiate proceedings to include the land within the district as otherwise provided by this Act.

(d) The provisions of this section relating to the method of including land in a district without securing the written consent of a city applies only to land within the extraterritorial jurisdiction of a city and does not apply to land within the corporate limits of a city. If the city fails or refuses to grant permission for the inclusion of land in a district or to execute a mutually agreeable contract providing for the water or sanitary sewer service requested within the time limits contained within Subsection (b) or (c) of this section, the applicant may petition the commission for creation of the district or inclusion of the land in a district. The commission shall allow creation or inclusion of the land in a proposed district upon a finding that the city either does not have the reasonable ability to serve or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner. The commitment shall provide that construction of the facilities necessary to serve the land shall be commenced within two years, and shall be substantially complete within four and one-half years from the date the petition was filed with the city. Upon any appeal taken to the district court from the commission ruling, all parties to the commission hearing shall be made parties to the appeal. The court shall hear the case within 120 days from the date the appeal is filed. If the case is continued or appealed to a higher court beyond such 120-day period, the court shall require the appealing party in the case of appeal to a higher court or party requesting such continuance to post a bond or other adequate security in the amount of damages that may be incurred by any party as a result of such appeal or delay from the commission action. The amount of the bond or other security shall be determined by the court after notice and hearing. Upon final disposition, a court may award damages, including any damages for delays, attorney's fees, and costs of court to the prevailing party. Under no circumstances shall land within the corporate limits of a city be included in a district without the written consent, by ordinance or resolution, of the city. The provisions of this section shall apply whether the land is proposed to be included in the district at the time of creation of a district or to be included by annexation to a

district. A district shall not allow the owner of a tract to connect to the district's water or wastewater system unless such tract is a legally subdivided lot which is part of a recorded subdivision plat or is otherwise legally exempt from the subdivision requirements of the applicable governmental authority.

(e) A city may provide in its written consent to the inclusion of land in a district, that the district construct all facilities to serve the land in accordance with plans and specifications which have been approved by the city. The city may also provide in its written consent that the city shall have the right to inspect all facilities being constructed by a district. The city's consent to the inclusion of land in the district may also contain restrictions on the terms and provisions of the district's bonds and notes issued to provide service to the land and conditions on the sale of the district's bonds and notes if the restrictions and conditions do not generally render the bonds and notes of districts in the city's extraterritorial jurisdiction unmarketable. The city's consent to the inclusion of land in a district may restrict the purposes for which a district may issue bonds to the purposes of the purchase, construction, acquisition, repair, extension and improvement of land, easements, works, improvements, facilities, plants, equipment and appliances necessary to:

(1) provide a water supply for municipal uses, domestic uses and commercial purposes;

(2) collect, transport, process, dispose of and control all domestic, industrial or communal wastes whether in fluid, solid or composite state; and

(3) gather, conduct, divert and control local storm water or other local harmful excesses of water in the district and the payment of organization expenses, operation expenses during construction and interest during construction.

(f) A city may provide in its written consent for the inclusion of land in a district that is initially located wholly or partly outside the corporate limits of the city that a contract ("allocation agreement") between the district and the city be entered into prior to the first issue of bonds, notes, warrants, or other obligations of the district. The allocation agreement shall contain the following provisions:

(1) a method by which the district shall continue to exist following the annexation of all territory within the district by the

city, if the district is located outside the corporate limits of the city at the time the creation of the district is approved by the district's voters;

(2) an allocation of the taxes or revenues of the district or the city which will assure that, following the date of the inclusion of all the district's territory within the corporate limits of the city, the total annual ad valorem taxes collected by the city and the district from taxable property within the district does not exceed an amount greater than the city's ad valorem tax upon such property;

(3) an allocation of governmental services to be provided by the city or the district following the date of the inclusion of all of the district's territory within the corporate limits of the city; and

(4) such other terms and conditions as may be deemed appropriate by the city.

(g) In addition to all the rights and remedies provided by the laws of the state in the event a district violates the terms and provisions of a city's written consent, the city shall be entitled to injunctive relief or a writ of mandamus issued by a court of competent jurisdiction restraining, compelling or requiring the district and its officials to observe and comply with the terms and provisions prescribed in the city's written consent to the inclusion of land within the district.

(h) A city, other than a city with a population of more than one million that is located primarily in a county with a population of two million or more, may provide in its written consent for the inclusion of land in a district that after annexation the city may set rates for water and/or sewer services for property that was within the territorial boundary of such district at the time of annexation, which rates may vary from those for other properties within the city for the purpose of wholly or partially compensating the city for the assumption of obligation under this code providing that:

(1) such written consent contains a contract entered into by the city and the persons petitioning for creation of the district setting forth the time and/or the conditions of annexation by the city which annexation shall not occur prior to the installation of 90 percent of the facilities for which district bonds were authorized in the written consent; and that

(2) the contract sets forth the basis on which rates are to be charged for water and/or sewer services following annexation and the length of time they may vary from those rates charged elsewhere in the city; and that

(3) the contract may set forth the time, conditions, or lands to be annexed by the district; and that

(4)(A) Each purchaser of land within a district which has entered into a contract with a city concerning water and/or sewer rates as set forth herein shall be furnished by the seller at or prior to the final closing of the sale and purchase with a separate written notice, executed and acknowledged by the seller, which shall contain the following information:

(i) the basis on which the monthly water and/or sewer rate is to be charged under the contract stated as a percentage of the water and/or sewer rates of the city;

(ii) the length of time such rates will be in effect;

(iii) the time and/or conditions of annexation by the city implementing such rates.

The provisions of Sections 49.452(g)-(p) and (s), Water Code, are herein incorporated by reference thereto, and are applicable to the separate written notice required by Section 54.016(h)(4).

A suit for damages under the provisions of these referenced sections must be brought within 90 days after the purchaser receives his or her first water and/or sewer service charge following annexation, or the purchaser loses his or her right to seek damages under this referenced section.

(B) The governing board of any district covered by the provisions of this subsection shall file with the county clerk in each of the counties in which all or part of the district is located a duly affirmed and acknowledged statement which includes the information required in Section 54.016(h)(4)(A) and a complete and accurate map or plat showing the boundaries of the district.

The provisions of Sections 49.455(c)-(j), Water Code, are herein incorporated by reference thereto.

(i) This subsection applies only to a city with a population of 500,000 or more located in a county with a population of 1.4 million or more in which two or more cities or towns with a population of 300,000 or more are predominately located. A city may provide in its written consent to the inclusion of land in a district that a

district water facility that serves land developed and subdivided into lots of less than one acre must meet the fire flow requirements to which the city is subject.

(j) A city may supplement its written consent in settlement of a water rate dispute with a district, and the terms of the supplement remain in effect after expiration of the written consent unless the city and the district agree otherwise.

Added by Acts 1971, 62nd Leg., p. 775, ch. 84, Sec. 1. Amended by Acts 1975, 64th Leg., p. 247, ch. 98, Sec. 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 2026, ch. 796, Sec. 1, 4, eff. Aug. 27, 1979; Acts 1987, 70th Leg., ch. 1077, Sec. 9, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1, Sec. 3(m), eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.326, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 669, Sec. 147, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1098 (H.B. 3378), Sec. 2, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 183, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 28, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 761 (S.B. 1987), Sec. 6, eff. June 12, 2017.

Acts 2017, 85th Leg., R.S., Ch. 965 (S.B. 2014), Sec. 5, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 17.002, eff. September 1, 2019.

Sec. 54.0161. REVIEW OF CREATION BY COUNTY. (a) This section applies only to a proposed district all of which is to be located outside the corporate limits of a municipality.

(a-1) Promptly after a petition is filed with the commission to create a district to which this section applies, the commission shall notify the commissioners court of any county in which the proposed district is to be located.

(a-2) The commissioners court of a county in which the district is to be located may review the petition for creation and other evidence and information relating to the proposed district that the

commissioners consider necessary. Petitioners for the creation of a district shall submit to the county commissioners court any relevant information requested by the commissioners court.

(b) In the event the county commissioners court votes to submit information to the commission or to make a recommendation regarding the creation of the proposed district, the commissioners court shall submit to the commission, at least 10 days before the date set for action on the petition, a written opinion stating:

(1) whether the commissioners court recommends the creation of the proposed district; and

(2) any findings, conclusions, and other information that the commissioners court thinks would assist the commission in making a final determination on the petition.

(c) In passing on a petition subject to this section, the commission shall consider the written opinion submitted by the county commissioners court.

Added by Acts 1975, 64th Leg., p. 1293, ch. 485, Sec. 1, eff. Sept. 1, 1975.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 645 (H.B. 738), Sec. 1, eff. September 1, 2013.

Sec. 54.0162. OPTION OF SELECTION BY DISTRICT COMPOSED OF NONCONTIGUOUS AREAS LOCATED IN THE EXTRATERRITORIAL JURISDICTION OF TWO MUNICIPALITIES. (a) A municipal utility district composed of noncontiguous areas that on January 1, 1995, are contained in the extraterritorial jurisdiction of two municipalities may choose, by a resolution of the governing body of the district, to be wholly contained in the extraterritorial jurisdiction of one municipality selected by the governing body of the district if:

(1) both the municipality selected by the district and all parts of the district are located in the same county;

(2) a majority of the area of the municipality not selected by the district is in a county other than the county in which the district is located, and neither county has a population greater than 3.3 million;

(3) the boundary of the municipality selected by the district is located not more than two miles from any part of the

district;

(4) the noncontiguous areas of the district are not, at their closest point, more than two miles apart;

(5) the district is within a water control and improvement district; and

(6) a certified copy of the resolution of the governing body of the district is filed with both municipalities before the effective date specified in the resolution.

(b) If a municipal utility district selects a municipality under Subsection (a), another municipal utility district that has a boundary contiguous to the district that has selected a municipality under Subsection (a) and has a boundary contiguous to the selected municipality may choose by resolution of the governing body of the municipal utility district to be contained wholly in the extraterritorial jurisdiction of the selected municipality. A copy of the resolution must be filed in the same manner as required by Subsection (a)(6).

(c) The governing body of a municipality not selected under the provisions of Subsection (a) or (b) shall release the area of the municipal utility district from the municipality's extraterritorial jurisdiction on the effective date of the resolution presented to the governing body of the municipality under Subsection (a) or (b). The released area becomes part of the extraterritorial jurisdiction of the selected municipality. The released area is not subject to any ordinance of the municipality not selected by the district.

(d) This section controls over any other law relating to the creation, application, or operation of the extraterritorial jurisdiction of a municipality.

(e) The provisions of this section also apply to a municipal utility district that:

(1) was created before 1980;

(2) has an area of 700 acres or less; and

(3) is located, in part, within the extraterritorial jurisdiction of two or more municipalities and, in part, outside municipal extraterritorial jurisdiction in the unincorporated area of a county.

(f) A municipal utility district acting under Subsection (e) shall comply with the notification and selection requirements of this section. A municipality affected by the decision of a municipal utility district acting under Subsection (e) shall comply with the

requirements of Subsections (b) and (c).

(g) A municipal utility district described by Subsection (e) shall notify the affected municipality within 30 calendar days of notice of intent to annex by that municipality.

Added by Acts 1995, 74th Leg., ch. 784, Sec. 1, eff. June 16, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 184, eff. September 1, 2011.

Sec. 54.0163. OPTION OF SELECTION OF EXTRATERRITORIAL JURISDICTION FOR CERTAIN DISTRICTS. (a) The board of a district that is located in the extraterritorial jurisdictions of more than one municipality by resolution may select the municipality that may exercise authority within the district as a whole. The resolution must state the effective date.

(b) As soon as practicable, the board shall file with each affected municipality and in the real property records of each county in which the district is located a certified copy of the resolution.

(c) On the effective date of the resolution, the district is contained wholly in the extraterritorial jurisdiction of the municipality selected by the resolution for all purposes. No action or approval by a municipality not selected is required.

(d) A board that has made a selection of extraterritorial jurisdiction under Section 54.0162 may confirm the selection by the adoption of a resolution under this section. If the selection under Section 54.0162 is confirmed under this subsection, the selection is effective from the date of the original selection.

(e) Repealed by Acts 2003, 78th Leg., ch. 248, Sec. 57.

Added by Acts 1997, 75th Leg., ch. 1188, Sec. 1, eff. June 20, 1997.
Amended by Acts 2003, 78th Leg., ch. 248, Sec. 57(1), eff. June 18, 2003.

Sec. 54.0165. ADDITION TO DISTRICT OF LAND IN EXTRATERRITORIAL JURISDICTION OF MUNICIPALITY. (a) A district may not add land that is located in the extraterritorial jurisdiction of a municipality unless the governing body of the municipality gives its written consent by ordinance or resolution in accordance with this subsection

and Section 54.016. In giving its consent, the municipality may not place any conditions or other restrictions on the expansion of the political subdivision other than those expressly permitted by Section 54.016(e).

(b) The procedures under Section 54.016 governing a municipality's refusal to consent to the creation of a district apply to a municipality that refuses to consent to the addition of land to a district under this section.

(c) An owner of land in the area proposed to be added to the district may not unreasonably refuse to enter into a contract for water or sanitary sewer services with the municipality under Section 54.016(c).

Added by Acts 2007, 80th Leg., R.S., Ch. 703 (H.B. 2091), Sec. 4, eff. June 15, 2007.

Sec. 54.018. NOTICE AND HEARING ON DISTRICT CREATION. If a petition is filed under Section 54.014, the commission shall give notice of an application as required by Section 49.011 and may conduct a hearing on the application if the commission determines that a hearing is necessary under Section 49.011.

Added by Acts 1971, 62nd Leg., p. 777, ch. 84, Sec. 1. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 27, eff. Sept. 1, 1997.

Sec. 54.020. HEARING. (a) If the commission determines that a hearing is necessary under Section 49.011, the commission shall conduct a hearing and accept evidence on the sufficiency of the petition and whether the project is feasible and practicable and is necessary and would be a benefit to all or any part of the land proposed to be included in the district.

(b) The commission shall have jurisdiction to determine all issues on the sufficiency of the petition and creation of the district.

(c) The hearing may be adjourned from day to day, and the commission shall have power to make all incidental orders necessary with respect to the matters before it.

Added by Acts 1971, 62nd Leg., p. 778, ch. 84, Sec. 1. Amended by

Acts 1997, 75th Leg., ch. 1070, Sec. 28, eff. Sept. 1, 1997.

Sec. 54.021. GRANTING OR REFUSING PETITION. (a) If the commission finds that the petition conforms to the requirements of Section 54.015 and that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.

(b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider:

(1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and

(3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:

(A) land elevation;

(B) subsidence;

(C) groundwater level within the region;

(D) recharge capability of a groundwater source;

(E) natural run-off rates and drainage;

(F) water quality; and

(G) total tax assessments on all land located within a district.

(c) If the commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, the commission shall so find and exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.

(d) If the commission finds that the petition does not conform to the requirements of Section 54.015 of this code or that the project is not feasible, practicable, necessary, or a benefit to the land in the district, the commission shall so find by its order and deny the petition.

(e) A copy of the order of the commission granting or denying a petition shall be mailed to each city having extraterritorial

jurisdiction in the county or counties in which the district is located who requested a hearing under Section 49.011.

Added by Acts 1971, 62nd Leg., p. 778, ch. 84, Sec. 1. Amended by Acts 1975, 64th Leg., p. 1292, ch. 484, Sec. 1, eff. Sept. 1, 1975; Acts 1997, 75th Leg., ch. 1070, Sec. 29, eff. Sept. 1, 1997.

Sec. 54.022. TEMPORARY DIRECTORS. (a) If the commission grants the petition, it shall appoint five temporary directors to serve until permanent directors are elected.

(b) Except as provided by Subsection (c), a majority of temporary directors appointed under Subsection (a) must be residents of:

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

(2) a county adjacent to the county described by Subdivision (1); or

(3) if the district is located in a county that is in a metropolitan statistical area designated by the United States Office of Management and Budget or its successor agency, a county in the same metropolitan statistical area as the county in which the district is located.

(c) The commission may appoint temporary directors who do not meet the requirements of Subsection (b) if the petition or the application accompanying the petition provides that the petitioner made reasonable efforts but failed to identify candidates meeting those requirements who were willing to serve as temporary directors.

Added by Acts 1971, 62nd Leg., p. 778, ch. 84, Sec. 1.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 4, eff. September 1, 2019.

Sec. 54.023. APPEAL FROM THE ORDER OF THE COMMISSION. Any person who signed the petition, any city, or any person who appeared in person or by attorney or agent and offered testimony for or against the creation of the district, may appeal from the order of the commission granting or refusing the petition within 30 days after the entry of the order.

Added by Acts 1971, 62nd Leg., p. 778, ch. 84, Sec. 1.

Sec. 54.024. SUPERVISION BY COMMISSION. The rights, powers, privileges, authority, and functions conferred on a district by granting of a petition for creation shall be subject to the continuing right of supervision of the state to be exercised by and through the commission.

Added by Acts 1971, 62nd Leg., p. 778, ch. 84, Sec. 1. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.142, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 11.328, eff. Sept. 1, 1995.

Sec. 54.025. QUALIFICATION OF TEMPORARY DIRECTORS. After a district has been organized, each temporary director shall execute a bond in accordance with the provisions of Section 49.055 and shall take the oath of office, and the board shall meet and organize.

Added by Acts 1971, 62nd Leg., p. 778, ch. 84, Sec. 1. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 16, eff. Sept. 1, 1995.

Sec. 54.030. CONVERSION OF CERTAIN DISTRICTS INTO DISTRICTS OPERATING UNDER THIS CHAPTER. (a) Any water improvement district, water control and improvement district, fresh water supply district, levee improvement district, irrigation district, or any other conservation and reclamation district created under Article XVI, Section 59, of the Texas Constitution, may be converted to a district operating under this chapter.

Text of subsection as amended by Acts 2019, 86th Leg., R.S., Ch. 539 (H.B. 2914), Sec. 2

(b) The governing body of a district which desires to convert into a district operating under this chapter shall adopt and enter in the minutes of the governing body a resolution declaring that in its judgment, conversion into a municipal utility district operating under this chapter and under Article XVI, Section 59, of the Texas Constitution, would serve the best interest of the district and would be a benefit to the land and property included in the district. The

resolution shall also request that the commission approve the conversion of the district.

Text of subsection as amended by Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 5

(b) The governing body of a district which desires to convert into a district operating under this chapter shall, after providing notice in accordance with Section 54.032, hold a hearing on the question of the conversion of the district into a municipal utility district operating under this chapter and under Article XVI, Section 59, of the Texas Constitution.

(c) The governing body of the converting district must present a general description of any litigation that is pending against the district at the hearing under Subsection (b).

(d) After the hearing held under Subsection (b), the governing body of the converting district may adopt and enter in the minutes of the governing body a resolution declaring that in the judgment of the governing body, conversion under this section would serve the best interest of the district and would be a benefit to the land and property included in the district. The resolution shall also request that the commission approve the conversion of the district.

(e) A copy of the resolution under Subsection (d) shall be:

(1) filed with the commission; and

(2) mailed to each state senator and representative who represents the area in which the district is located.

Added by Acts 1971, 62nd Leg., p. 779, ch. 84, Sec. 1. Amended by Acts 1983, 68th Leg., p. 368, ch. 81, Sec. 9(e), eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 399, Sec. 3, eff. Sept. 1, 1987.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 539 (H.B. 2914), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 5, eff. September 1, 2019.

Sec. 54.032. CONVERSION OF DISTRICT: NOTICE.

Text of subsection as amended by Acts 2019, 86th Leg., R.S., Ch. 539 (H.B. 2914), Sec. 3

(a) Notice of the conversion shall be given by publishing

notice in a newspaper with general circulation in the county or counties in which the district is located.

Text of subsection as amended by Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 6

(a) The governing body of a district described by Section 54.030(b) shall give notice of the conversion hearing by publishing notice in a newspaper with general circulation in the district.

(b) The notice shall be published once a week for two consecutive weeks.

(c) The notice shall:

(1) set out the resolution adopted by the district in full; and

(2) notify all interested persons how they may offer comments for or against the proposal contained in the resolution.

Added by Acts 1971, 62nd Leg., p. 780, ch. 84, Sec. 1.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 539 (H.B. 2914), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 6, eff. September 1, 2019.

Sec. 54.033. CONVERSION OF DISTRICT; FINDINGS.

Text of subsection as amended by Acts 2019, 86th Leg., R.S., Ch. 539 (H.B. 2914), Sec. 4

(a) If the commission finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, it shall enter an order making this finding and the district shall become a district operating under this chapter and no confirmation election shall be required.

Text of subsection as amended by Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 7

(a) After receiving a request for the approval of a conversion under Section 54.030(d), if the commission finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and

property included in the district, the commission shall enter an order making this finding and the district shall become a district operating under this chapter and no confirmation election is required.

(b) If the commission finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, it shall enter an order against conversion of the district into one operating under this chapter.

(c) The findings of the commission entered under this section shall be subject to appeal or review within 30 days after entry of the order of the commission granting or denying the conversion.

(d) A copy of the commission order converting a district shall be filed in the deed records of the county or counties in which the district is located.

Added by Acts 1971, 62nd Leg., p. 780, ch. 84, Sec. 1. Amended by Acts 1981, 67th Leg., p. 981, ch. 367, Sec. 23, eff. June 10, 1981. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 539 (H.B. 2914), Sec. 4, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 7, eff. September 1, 2019.

Sec. 54.034. EFFECT OF CONVERSION. A district which is converted into a district operating under this chapter shall:

(1) be constituted a municipal utility district operating under and governed by this chapter;

(2) be a conservation and reclamation district under the provisions of Article XVI, Section 59, of the Texas Constitution; and

(3) have and may exercise all the powers, authority, functions, duties, and privileges provided in this chapter in the same manner and to the same extent as if the district had been created under this chapter.

Added by Acts 1971, 62nd Leg., p. 780, ch. 84, Sec. 1.

Sec. 54.035. RESERVATION OF CERTAIN POWERS FOR CONVERTED

DISTRICTS. (a) Any district after converting into a municipal utility district may continue to exercise all necessary specific powers under any specific conditions provided by the chapter of this code under which the district was operating before conversion and may retain its original name.

(b) Any district converted into a municipal utility district shall continue to have the power to issue bonds voted before the conversion but yet unissued and levy and collect maintenance taxes, bond taxes, or other taxes which were voted before the conversion.

(c) At the time of making the order of conversion, the commission shall specify in the order the specific provisions of this code under which the district had been operating which are to be preserved and made applicable to the operations of the district after conversion into a district operating under this chapter and whether a new name will be assigned to the district or the old name retained.

(d) A reservation of a former power under Subsection (a) of this section may be made only if this chapter does not make specific provision concerning a matter necessary to the effectual operation of the converted district.

(e) In all cases in which this chapter does make specific provision, this chapter shall, after conversion, control the operations and procedure of the converted district.

Added by Acts 1971, 62nd Leg., p. 781, ch. 84, Sec. 1.

Sec. 54.036. DIRECTORS TO CONTINUE SERVING. The existing board of a district converted to a municipal utility district under the provisions of this chapter shall continue to serve as the board of the converted district.

Added by Acts 1971, 62nd Leg., p. 781, ch. 84, Sec. 1. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1983, 68th Leg., p. 1105, ch. 250, Sec. 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5214, ch. 951, Sec. 6, eff. Jan. 1, 1984; Acts 1995, 74th Leg., ch. 715, Sec. 17, eff. Sept. 1, 1995.

Sec. 54.037. REGIONAL PLAN IMPLEMENTATION AGENCIES. (a) This section applies only to regional plan implementation agencies, referred to in this section as agency, created as provided below. An

agency may only be created in connection with regional planning efforts, and only then when requested by a city. The purpose of this section is to encourage and promote regional planning by cities and to facilitate the implementation of areawide, systematic solutions to water, waste disposal, drainage, and other problems.

(b) The creation of an agency requires that a special petition be filed with the commission. The special petition shall:

(1) describe the boundaries of the proposed agency by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area;

(2) describe the regional planning efforts which are in progress or completed as of the date of the petition and the anticipated role of the proposed agency in connection with the implementation of the regional plan;

(3) include a name of the proposed agency, which must be generally descriptive of the locale followed by the words "regional plan implementation agency" and must be different from the name of any other agency in the same county;

(4) be signed by or on behalf of the owner or owners of the fee simple title to 50 percent or more of the surface of the land within the boundaries of the proposed agency, as of the date of the petition, as indicated by the county tax rolls or other title data acceptable to the commission;

(5) be approved by the governing body of each city having extraterritorial jurisdiction over land within the boundaries of the proposed agency as of the date of the petition, by motion, resolution, or ordinance which certifies that:

(A) the regional planning efforts described in the petition are approved by the city;

(B) in the opinion of the governing body, the creation of the proposed agency would assist in the implementation of such regional plan; and

(C) the city requests and consents to the creation of the proposed agency; and

(6) be endorsed by an officer of each such city to indicate that the petition has been so approved by the governing body.

(c) The application fee for such a special petition is the same as for any ordinary district. After the petition is filed, the standards and procedures for commission review and action are the same as for any ordinary district, except that:

(1) the commission must consider the scope of the regional plan in connection with its findings; and

(2) the requirements for the special petition, above, shall apply in lieu of the requirements for ordinary districts set out in Section 54.014, 54.015, 54.016, or other sections of this code.

(d) The application of an agency for approval of a bond issue must include an agreement between the agency and each city having extraterritorial jurisdiction over land within the agency as of the date of the application. The agreement must identify those facilities which are proposed to be financed from the proceeds of the bond issue in question. It must also identify which of those facilities are part of the regional plan and which are not part of the plan. Those which are part of the regional plan:

(1) may be larger than would otherwise be necessary to serve just the needs of the agency; and

(2) may be constructed by, conveyed to, or otherwise acquired by the city, subject to the terms of such agreement. Those facilities which are not part of the regional plan and are to be financed by the agency must be agreed upon by the city and the agency as being consistent with the regional plan.

(e) An agency may acquire any land, easements, or other property, real or personal, within or without the agency, for any purpose or function permitted to a district and may elect to condemn either the fee simple title or an easement only. Section 54.212(a) of this code does not apply to an agency. If the mode and manner for condemnation of any type of property is not otherwise prescribed by law, the Texas Water Development Board may prescribe the same by rule.

(f) An agency is a district subject to all provisions of this chapter and other laws relating to districts, except that the special provisions of this section shall take precedence over differing or conflicting provisions elsewhere.

(g) Nothing in this Act waives the requirements of this chapter or other applicable laws relating to voter approval of bond issues.

Added by Acts 1985, 69th Leg., ch. 939, Sec. 1, eff. Aug. 26, 1985.
Amended by Acts 1987, 70th Leg., ch. 399, Sec. 4, eff. Sept. 1, 1987.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 54.101. BOARD OF DIRECTORS. A district shall be governed by a board of five directors.

Added by Acts 1971, 62nd Leg., p. 781, ch. 84, Sec. 1.

Sec. 54.102. QUALIFICATIONS FOR DIRECTORS. To be qualified to serve as a director, a person shall be at least 18 years old, a resident citizen of the State of Texas, and either own land subject to taxation in the district or be a qualified voter within the district.

Added by Acts 1971, 62nd Leg., p. 781, ch. 84, Sec. 1. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 30, eff. Sept. 1, 1997.

Sec. 54.103. LIMITATION ON FILLING VACANCIES. A board may not appoint a person to fill a vacancy on the board if the person:

(1) resigned from the board:

(A) in the two years preceding the vacancy date; or

(B) on or after the vacancy date but before the vacancy is filled; or

(2) was defeated in a directors election held by the district in the two years preceding the vacancy date.

Added by Acts 2005, 79th Leg., Ch. 33 (S.B. 693), Sec. 1, eff. May 9, 2005.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 54.201. POWERS. (a) A district shall have the functions, powers, authority, rights, and duties which will permit accomplishment of the purposes for which it was created.

(b) A district is authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of the district authorized by the constitution, this code, or other law, including all works, improvements, facilities, plants, equipment, and appliances incident, helpful, or necessary to:

(1) supply water for municipal uses, domestic uses, power,

and commercial purposes and all other beneficial uses or controls;

(2) collect, transport, process, dispose of, and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state;

(3) gather, conduct, divert, and control local storm water or other local harmful excesses of water in a district;

(4) irrigate the land in a district;

(5) alter land elevation in a district where it is needed;

(6) navigate coastal and inland waters of the district; and

(7) provide parks and recreational facilities for the inhabitants in the district, subject to the provisions of Chapter 49.

Added by Acts 1971, 62nd Leg., p. 786, ch. 84, Sec. 1. Amended by Acts 1985, 69th Leg., ch. 100, Sec. 2, eff. Sept. 1, 1985; Acts 2003, 78th Leg., ch. 248, Sec. 27, eff. June 18, 2003.

Sec. 54.203. MUNICIPAL SOLID WASTE. A district is authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, extend, or establish a municipal solid waste collection and disposal system, including recycling, inside and outside the district and make proper charges for it. A district may require use of such services as a condition for receiving other district services. A district may enter into an exclusive contract with a private entity to provide such services to all land and persons within its boundaries.

Added by Acts 1971, 62nd Leg., p. 787, ch. 84, Sec. 1. Amended by Acts 1991, 72nd Leg., ch. 820, Sec. 1, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 715, Sec. 18, eff. Sept. 1, 1995.

Sec. 54.205. ADOPTING RULES AND REGULATIONS. A district may adopt and enforce reasonable rules and regulations to:

(1) secure and maintain safe, sanitary, and adequate plumbing installations, connections, and appurtenances as subsidiary parts of its sanitary sewer system;

(2) preserve the sanitary condition of all water controlled by the district;

(3) prevent waste or the unauthorized use of water

controlled by the district;

(4) regulate privileges on any land or any easement owned or controlled by the district; and

(5) provide and regulate a safe and adequate freshwater distribution system.

Added by Acts 1971, 62nd Leg., p. 787, ch. 84, Sec. 1. Amended by Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981.

Sec. 54.2051. SERVICE CONNECTIONS TO CERTAIN DWELLING UNITS. (a) If the tenant of an individually metered dwelling unit applies to a district for utility service for that unit, the district may not require that the service be connected in the name of the landlord or owner of the unit.

(b) This section does not apply to a dwelling unit that is located in a building that:

(1) contains two or more dwelling units; and

(2) is served by a master meter or demand meter.

(c) In this section, "individually metered dwelling unit" means one or more rooms:

(1) rented for use as a permanent residence under a single verbal or written rental agreement; and

(2) served by a utility meter that belongs to the district and measures service only for that unit.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 8, eff. Sept. 1, 1997.

Sec. 54.2052. PLUMBING CODE. Notwithstanding any other law, a district is not required to adopt a plumbing code. A district may adopt and enforce one or more plumbing codes meeting the standards and requirements of the rules and laws of this state and may amend any code adopted to conform to local concerns if the amendment does not substantially vary from rules or laws of this state. If a municipal regulation conflicts with a district regulation, the municipal regulation prevails.

Added by Acts 2003, 78th Leg., ch. 248, Sec. 28, eff. June 18, 2003.

Sec. 54.206. EFFECT OF RULES. After the required publication, rules adopted by the district under Section 54.205 of this code shall be recognized by the courts as if they were penal ordinances of a city.

Added by Acts 1971, 62nd Leg., p. 787, ch. 84, Sec. 1.

Sec. 54.207. PUBLICATION OF RULES. (a) The board shall publish once a week for two consecutive weeks a substantive statement of the rules and the penalty for their violation in one or more newspapers with general circulation in the area in which the district is located.

(b) The substantive statement shall be condensed as far as possible to intelligently explain the purpose to be accomplished or the act forbidden by the rules.

(c) The notice must advise that breach of the rules will subject the violator to a penalty and that the full text of the rules are on file in the principal office of the district where they may be read by any interested person.

(d) Any number of rules may be included in one notice.

Added by Acts 1971, 62nd Leg., p. 787, ch. 84, Sec. 1.

Sec. 54.208. EFFECTIVE DATE OF RULES. The penalty for violation of a rule is not effective and enforceable until five days after the publication of the notice. Five days after the publication, the published rule shall be in effect and ignorance of it is not a defense to a prosecution for the enforcement of the penalty.

Added by Acts 1971, 62nd Leg., p. 788, ch. 84, Sec. 1.

Sec. 54.209. LIMITATION ON USE OF EMINENT DOMAIN. A district may not exercise the power of eminent domain outside the district boundaries to acquire:

(1) a site for a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant;

(2) a site for a park, swimming pool, or other recreational

facility, as defined by Section 49.462;

(3) an exclusive easement through a county regional park; or

(4) a site or easement for a road project.

Added by Acts 2005, 79th Leg., Ch. 271 (H.B. 1208), Sec. 1, eff. June 9, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 21, eff. September 1, 2011.

Sec. 54.234. ACQUIRING ROAD POWERS. (a) Any district or any petitioner seeking the creation of a district may petition the commission to acquire the power under the authority of Article III, Section 52, Texas Constitution, to design, acquire, construct, finance, issue bonds for, operate, maintain, and convey to this state, a county, or a municipality for operation and maintenance, a road or any improvement in aid of the road.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 24, eff. September 1, 2019.

(c) As soon as practicable after such petition has been filed with the commission, the commission shall issue an order either approving or denying such petition.

(d) If the commission issues an order approving the petition, the district may undertake a road project if:

(1) the municipality or county that will operate and maintain the road has approved the plans and specifications of the road project; or

(2) the Texas Transportation Commission has approved the plans and specifications of the road project, if the state is to operate and maintain the road.

(e) Except as provided by Subsection (d), a district is not required to obtain approval from the Texas Transportation Commission to acquire, construct, convey, or finance the road project.

Added by Acts 1985, 69th Leg., ch. 951, Sec. 7, eff. Sept. 1, 1985.
Amended by Acts 1995, 74th Leg., ch. 165, Sec. 22(77), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 248, Sec. 29, eff. June 18, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 777 (H.B. 3770), Sec. 1, eff.

June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 8, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 24, eff. September 1, 2019.

Sec. 54.235. AUTHORITY TO CONTRACT. Any district created by general law or special act of the legislature in existence for at least 10 years which lies within a county that borders on the Gulf of Mexico and that has a population of 190,000 and which has the powers of this chapter and which also has or is authorized to acquire road utility district powers pursuant to Section 54.234, of this code, may contract with the county within which it is located with respect to the ownership, maintenance, and operation of any facilities or improvements which such district is authorized or may be authorized to acquire by purchase, gift, lease, or otherwise, except by condemnation, any and all property or interests in property, whether real, personal, or mixed, tangible or intangible, located inside or outside such county, that are found to be necessary for such improvements or facilities. Such county may enter into contracts with such districts as permitted by this section for any term of years not exceeding 40 for the management and operation of any or all of such property and interests in property on such terms as the commissioners court of such county deems appropriate.

Added by Acts 1985, 69th Leg., ch. 951, Sec. 8(a), eff. Sept. 1, 1985.

Sec. 54.2351. CONTRACTS WITH OTHER DISTRICTS, WATER SUPPLY CORPORATIONS, OR OTHER RETAIL PUBLIC UTILITIES. (a) In this section, "authorized water district" means a district created under Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution.

(b) A district may enter into a contract with an authorized water district or a water supply corporation that authorizes the district to acquire, through the issuance of debt or other means, and convey to the authorized water district or water supply corporation all or part of a water supply, treatment, or distribution system, a

sanitary sewage collection or treatment system, or works or improvements necessary for drainage of land in the district. The contract may:

(1) permit the district to rehabilitate, repair, maintain, improve, enlarge, or extend any existing facilities to be conveyed to the authorized water district or water supply corporation; or

(2) require the district to pay impact fees or other fees to the authorized water district or water supply corporation for capacity or service in facilities of the authorized water district or water supply corporation.

(c) The contract entered into under Subsection (b) may authorize the authorized water district or water supply corporation to purchase the water, sewer, or drainage system from the district through periodic payments to the district in amounts that, combined with the net income of the district, are sufficient for the district to pay the principal of and interest on any bonds of the district. The contract may provide that the payments due under this subsection:

(1) are payable from and secured by a pledge of all or part of the revenues of the water, sewer, or drainage system;

(2) are payable from taxes to be imposed by the authorized water district; or

(3) are payable from a combination of the revenues and taxes described by Subdivisions (1) and (2).

(d) The contract may authorize the authorized water district or water supply corporation to operate the water, sewer, or drainage system conveyed by the district under Subsection (b).

(e) The contract may require the district to make available to the authorized water district or water supply corporation all or part of the raw or treated water to be used for the provision of services within the district.

(f) If the contract provides for the water, sewer, or drainage system to be conveyed to the authorized water district or water supply corporation on or after the completion of construction, the authorized water district or water supply corporation may pay the district to provide water, sewer, or drainage services to residents of the authorized water district or customers of the water supply corporation.

(g) The contract may authorize the district to convey to the authorized water district or water supply corporation at no cost a water, sewer, or drainage system and require the authorized water

district or water supply corporation to use all or part of those systems to provide retail service to customers within the district in accordance with the laws of this state and any certificate of convenience and necessity of the authorized water district or water supply corporation.

(h) A contract under this section must be approved by a majority vote of the governing bodies of the district and the authorized water district or water supply corporation. If Section 52, Article III, or Section 59, Article XVI, Texas Constitution, requires that qualified voters of the district approve the imposition of a tax by the district or the authorized water district, the district or the authorized water district shall call an election for that purpose.

(i) In this subsection, "retail public utility" has the meaning assigned by Section 13.002. A district may enter into a contract with a retail public utility for water or sewer service under which the retail public utility may use the district's water or sewer system to serve customers located in the district.

Added by Acts 2005, 79th Leg., Ch. 962 (H.B. 1644), Sec. 4, eff. June 18, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 9, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 10, eff. September 1, 2019.

Sec. 54.236. STREET OR SECURITY LIGHTING. (a) Subject to the provisions of this section, a district may purchase, install, operate, and maintain street lighting or security lighting within public utility easements or public rights-of-way or property owned by the district.

(b) A district may not issue bonds supported by ad valorem taxes to pay for the purchase, installation, and maintenance of street or security lighting, except as authorized by Section 54.234 or Subchapter N, Chapter 49.

Added by Acts 1991, 72nd Leg., ch. 820, Sec. 2, eff. Aug. 26, 1991.
Amended by Acts 2001, 77th Leg., ch. 1423, Sec. 30, eff. June 17, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 29, eff. September 1, 2013.

Sec. 54.237. ENFORCEMENT OF REAL PROPERTY RESTRICTIONS. (a) As used in this section, "restriction" means a limitation on the use of real property that is established or incorporated in properly recorded covenants, property restrictions, plats, plans, deeds, or other instruments affecting real property in a district and that has not been abandoned, waived, or properly rescinded.

(b) A district may take all actions necessary to enforce a restriction, including the initiation, defense, or intervention in litigation or an administrative proceeding to enjoin or abate the violation of a restriction when, in the reasonable judgment of the board of directors of the district, enforcement of the restriction is necessary to sustain taxable property values in the district.

(c) In addition to damages which a district is entitled to recover, a district shall be entitled to recover its costs and reasonable attorney's fees when a district is the prevailing party in litigation or an administrative proceeding to enforce a restriction.

Added by Acts 1991, 72nd Leg., ch. 820, Sec. 3, eff. Aug. 26, 1991.

Sec. 54.238. DEFINITIONS. In this subchapter:

(1) "Developer" means a person who owns a tract of land within a district and who has divided or proposes to divide the tract into two or more parts to lay out a subdivision of the tract, including an addition to a municipality, or to lay out suburban, building, or other lots, and to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts.

(2) "Facilities" means improvements constructed by a developer for a district.

Added by Acts 1993, 73rd Leg., ch. 1036, Sec. 1, eff. Sept. 1, 1993.

Sec. 54.239. APPEAL TO THE COMMISSION OF DECISION OF BOARD

REGARDING FACILITIES. A person aggrieved by a decision of a board involving the cost, purchase, or use of facilities may appeal the decision to the commission by filing a petition with the commission seeking appropriate relief within 30 days after the date of the decision. The commission may require a petitioner to include with a petition under this subchapter a deposit in an amount estimated to be sufficient to pay the costs of notice under V.T.C.A., Water Code Sec. 54.240 and to hold the hearing on the dispute.

Added by Acts 1993, 73rd Leg., ch. 1036, Sec. 1, eff. Sept. 1, 1993.

Sec. 54.240. NOTICE. The commission shall give notice of the petition to persons who the commission determines may be affected by the petition, including:

(1) the board;

(2) the owners of land within the district; and

(3) the ratepayers of the district who are served by the facilities that are the subject of the petition.

Added by Acts 1993, 73rd Leg., ch. 1036, Sec. 1, eff. Sept. 1, 1993.

Sec. 54.241. ACTION ON THE PETITION. (a) After notice and hearing, the commission shall render a written decision granting or denying the petition, in whole or in part.

(b) In rendering its decision, the commission shall consider:

(1) the suitability of and necessity for the facilities;

(2) the reasonableness of the cost of the facilities;

(3) the economic viability of the district; and

(4) any other relevant evidence.

Added by Acts 1993, 73rd Leg., ch. 1036, Sec. 1, eff. Sept. 1, 1993.

Sec. 54.242. STREET REPAIR OR MAINTENANCE. A district created by general law or special act of the legislature in existence for at least 10 years may repair or maintain a street within the district as provided by Section 54.522.

Added by Acts 1997, 75th Leg., ch. 520, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.243. DISPOSITION OF IMPACT FEES. A district that charges a fee that is an impact fee as described in Section 395.001(4), Local Government Code, shall use the fees collected and any interest accrued on the fees collected only for:

(1) payment of principal and interest on bonds, notes, or other obligations issued by or on behalf of the district to finance the capital improvements or facility expansions identified in the capital improvement plan required by Section 395.012(d), Local Government Code; or

(2) cash payment of the costs of capital improvements or facility expansions identified in the capital improvement plan required by Section 395.012(d), Local Government Code.

Added by Acts 1999, 76th Leg., ch. 1269, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1313, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER F. ISSUANCE OF BONDS

Sec. 54.501. ISSUANCE OF BONDS. The district may issue its bonds for any purpose authorized by this chapter, Chapter 49, or other applicable laws, including the purpose of purchasing, constructing, acquiring, owning, operating, repairing, improving, or extending any district works, improvements, facilities, plants, equipment, and appliances needed to accomplish the purposes set forth in Section 54.012 for which a district shall be created, including works, improvements, facilities, plants, equipment, and appliances needed to provide a waterworks system, sanitary sewer system, storm sewer system, and solid waste disposal system.

Added by Acts 1971, 62nd Leg., p. 795, ch. 84, Sec. 1. Amended by Acts 1985, 69th Leg., ch. 100, Sec. 3, eff. Sept. 1, 1985.
Amended by:

Acts 2005, 79th Leg., Ch. 962 (H.B. 1644), Sec. 5, eff. June 18, 2005.

Sec. 54.502. FORM OF BONDS. (a) A district may issue its bonds in various series or issues.

(b) Bonds shall mature serially or otherwise not more than 40 years from their date and shall bear interest at any rate permitted by the Constitution and laws of the state, all as shall be determined by the board.

(c) A district's bonds and interest coupons, if any, shall be investment securities under the terms of Chapter 8 of the Business & Commerce Code and may be issued registrable as to principal or as to both principal and interest and shall or may be made redeemable before maturity, at the option of the district or may contain a mandatory redemption provision all as may be provided by the board. A district's bonds may be issued in the form, denominations, and manner and under the terms, conditions, and details, and shall be signed and executed, as provided by the board in the resolution or order authorizing their issuance.

Added by Acts 1971, 62nd Leg., p. 795, ch. 84, Sec. 1.

Sec. 54.503. MANNER OF REPAYMENT OF BONDS. The board may provide for the payment of principal of and interest and redemption price on the bonds in any one of the following manners:

(1) from the levy and collection of ad valorem taxes on all taxable property within the district;

(2) by pledging all or any part of the designated revenues to result from the ownership or operation of the district's works, improvements, facilities, plants, equipment, and appliances or under specific contracts for the period of time the board determines;

(3) by pledging all or part of any funds or revenues available to the district; or

(4) a combination of the sources set forth in Subdivisions (1), (2), and (3) of this section.

Added by Acts 1971, 62nd Leg., p. 795, ch. 84, Sec. 1. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 30, eff. June 18, 2003.

Sec. 54.504. ADDITIONAL SECURITY FOR BONDS. (a) The bonds, within the discretion of the board, may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district, and franchises, easements, water rights, and appropriation permits, leases, and contracts and all rights

appurtenant to such properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers and authority necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may contain provisions prescribed by the board for the security of the bonds and the preservation of the trust estate, and may make provisions for amendment or modification, and may condition the right to spend district money or sell district property on approval of a registered professional engineer selected as provided in the trust indenture and may make provisions for investment of funds of the district.

(c) Any purchaser under a sale under the deed of trust or mortgage lien, where one is given, shall be absolute owner of the properties, facilities, and rights purchased and shall have the right to maintain and operate them.

Added by Acts 1971, 62nd Leg., p. 796, ch. 84, Sec. 1.

Sec. 54.505. ELECTION ON TAX BONDS. Bonds payable solely from revenues may be issued by resolution or order of the board without an election, but no bonds, except refunding bonds, payable wholly or partially from ad valorem taxes shall be issued until authorized by a majority vote of the resident electors of the district voting in an election called and held for that purpose. An election is not required to pledge revenues to the payment of bonds.

Added by Acts 1971, 62nd Leg., p. 796, ch. 84, Sec. 1. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 31, eff. June 18, 2003.

Sec. 54.507. NOTICE OF BOND ELECTION. (a) Repealed by Acts 1995, 74th Leg., ch. 715, Sec. 43, eff. Sept. 1, 1995.

(b) All or any part of any facilities or improvements which may be acquired by a district by the issuance of its bonds may be included in one single proposition to be voted on at the election or the bonds may be submitted in several propositions. A bond election may also be held on the same day as the confirmation election. The bond election may be called by a separate election order or as a part of the order calling the confirmation election.

(c) If a majority of the votes cast at the election are in favor of the issuance of the bonds, the bonds may be issued by the board if the confirmation election results favorably to the confirmation of the district.

Added by Acts 1971, 62nd Leg., p. 796, ch. 84, Sec. 1. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 43, eff. Sept. 1, 1995.

Sec. 54.510. PROVISIONS OF BONDS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds, and may make additional covenants with respect to the bonds and the pledged revenues and the operation and maintenance of those works, improvements, plants, facilities, equipment, and appliances the revenue of which is pledged, including provisions for the operation or for the leasing of all or any part of the improvements and the use or pledge of money derived from the operation contracts and leases, as the board may consider appropriate.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue 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, subject to the conditions which may be set forth in the orders or resolutions.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine, not prohibited by the Constitution or by this chapter.

(d) The board may adopt and cause to be executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Added by Acts 1971, 62nd Leg., p. 797, ch. 84, Sec. 1.

Sec. 54.512. SALE OR EXCHANGE OF BONDS. (a) The board shall sell the bonds on the best terms and for the best possible price but none of the bonds may be sold for less than 95 percent of face value.

(b) The district may exchange bonds for property acquired by purchase or in payment of the contract price of work done or services performed for the use and benefit of the district.

Added by Acts 1971, 62nd Leg., p. 797, ch. 84, Sec. 1.

Sec. 54.514. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds, notes, or other obligations including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 40 years from their date and shall bear interest at any rate or rates permitted by the Constitution and laws of the state.

(c) Refunding bonds may be payable from the same source as the bonds, notes, or other obligations being refunded or from other additional sources.

(d) The refunding bonds shall be approved by the attorney general as in the case of other bonds and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they shall be sold and the proceeds deposited in the place or places where the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded provided an amount sufficient to pay the interest on and principal of the bonds being refunded to their maturity dates, or to their option dates if the bonds have been duly called for payment prior to maturity according to their terms, has been deposited in the place or places where the bonds being refunded are payable. The comptroller shall register them without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons shall be investment securities under the provisions of Article 8 of the Business & Commerce Code.

(g) In lieu of the method set forth in Section 54.514(a)-(f) of this code, a district may refund bonds, notes, or other obligations as provided by the general laws of the state.

Added by Acts 1971, 62nd Leg., p. 798, ch. 84, Sec. 1.

Sec. 54.5161. REVIEW OF BOND PROJECTS BY COUNTIES. (a) Before the commission gives final approval on any bond issue for the purpose of financing a project of a district located wholly or partly outside the extraterritorial jurisdiction of a city, the commission shall notify the county commissioners of the county in which the district is located that an application has been filed and give the county an opportunity within 30 days after notification to examine all information on file and submit a written opinion from the commissioners court stating any findings, conclusions, or other information that the commissioners court considers important to the commission's final determination.

(b) In passing on the approval of a bond issue under this section, if a written opinion is submitted by the commissioners court, the commission shall consider the written opinion before taking final action.

Added by Acts 1975, 64th Leg., p. 1294, ch. 485, Sec. 3, eff. Sept. 1, 1975.

Sec. 54.518. MANDAMUS BY BONDHOLDERS. In addition to all other rights and remedies provided by the laws of the state, in the event the district defaults in the payment of principal, interest, or redemption price on its bonds when due, or in the event it fails to make payments into any fund or funds created in the order or resolution authorizing the issuance of the bonds, or defaults in the observation or performance of any other covenants, conditions, or obligations set forth in the resolution or order authorizing the issuance of its bonds, the owners of any of the bonds shall be entitled to a writ of mandamus issued by a court of competent jurisdiction compelling and requiring the district and its officials to observe and perform the covenants, obligations, or conditions prescribed in the order or resolution authorizing the issuance of the district's bonds.

Added by Acts 1971, 62nd Leg., p. 799, ch. 84, Sec. 1.

Sec. 54.520. CANCELLATION OF UNSOLD BONDS. (a) The board, by order or resolution, may provide for the cancellation of all or any part of any bonds which have been submitted to and approved by the

attorney general and registered by the comptroller, but not yet sold, and provide for the issuance of new bonds in lieu of the old bonds in the manner as provided by law for the issuance of the original bonds including their approval by the attorney general and their registration by the comptroller.

(b) The order or resolution of the board shall describe the bonds to be cancelled, and shall also describe the new bonds to be issued in lieu of the old bonds.

(c) A certified copy of the order or resolution of the board providing for the cancellation of the old bonds, together with the old bonds, shall be delivered to the comptroller, who shall cancel and destroy the old bonds and make a record of the cancellation.

Added by Acts 1971, 62nd Leg., p. 800, ch. 84, Sec. 1.

Sec. 54.521. USE OF BOND PROCEEDS TO PAY CERTAIN INTEREST. The district may use bond proceeds to pay or to establish a reasonable reserve to pay not more than three years' interest on the notes and bonds of the district as provided in the bond orders or resolutions.

Added by Acts 1979, 66th Leg., p. 882, ch. 402, Sec. 1, eff. Aug. 27, 1979.

Sec. 54.522. BONDS FOR STREET REPAIR OR MAINTENANCE. (a) The legislature finds that the condition of streets affects:

(1) the control, storage, preservation, and distribution of the state's storm and flood waters;

(2) the control, abatement, or change of any shortage or harmful excess of water; and

(3) a municipal utility district's ability to accomplish its purposes.

(b) It is the policy of the state to authorize a municipal utility district in certain circumstances to take action that is necessary to prevent the condition of a street within the district from adversely affecting the control, storage, preservation, and distribution of the state's storm and flood waters, adversely affecting the control, abatement, or change of any shortage or harmful excess of water, or otherwise impeding a district's ability to accomplish its purposes.

(c) A district created by general law or special act of the legislature in existence for at least 10 years may issue bonds for the purpose of repairing or maintaining streets within the district if the bonds are authorized by a majority vote of the resident electors of the district voting in an election called and held for that purpose.

(d) An election required by this section must be held on the uniform election date in November authorized by Section 41.001, Election Code. Notwithstanding Section 41.003, Election Code, an election under this section may be held on the date of the general election for state and county officers.

Added by Acts 1997, 75th Leg., ch. 520, Sec. 2, eff. Sept. 1, 1997.

SUBCHAPTER G. TAXES

Sec. 54.601. TAX LEVY FOR BONDS. At the time bonds payable in whole or in part from taxes are issued, the board shall levy a continuing direct annual ad valorem tax for each year while all or part of the bonds are outstanding on all taxable property within the district in sufficient amount to pay the interest on the bonds as it becomes due and to create a sinking fund for the payment of the principal of the bonds when due or the redemption price at any earlier required redemption date and to pay the expenses of assessing and collecting the taxes.

Added by Acts 1971, 62nd Leg., p. 801, ch. 84, Sec. 1.

Sec. 54.602. ESTABLISHMENT OF TAX RATE IN EACH YEAR. (a) Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, Sec. 6(a)(3), eff. Jan. 1, 1982.

(b) In determining the actual rate to be levied in each year, the board shall consider among other things:

(1) the amount which should be levied for maintenance and operation purposes, if a maintenance tax has been authorized;

(2) the amount which should be levied for the payment of principal, interest, and redemption price of each series of bonds or notes payable in whole or in part from taxes;

(3) the amount which should be levied for the purpose of paying all other contractual obligations of the district payable in

whole or in part from taxes; and

(4) the percentage of anticipated tax collections and the cost of collecting the taxes.

(c) In determining the amount of taxes which should be levied each year, the board may consider whether proceeds from the sale of bonds have been placed in escrow to pay interest during construction and whether the board reasonably expects to have revenue or receipts available from other sources which are legally available to pay principal of or interest or redemption price on the bonds. The board shall levy a tax in the first full year after issuance of its first series of bonds.

Added by Acts 1971, 62nd Leg., p. 801, ch. 84, Sec. 1. Amended by Acts 1979, 66th Leg., p. 2330, ch. 841, Sec. 6(a)(3), eff. Jan. 1, 1982.

Sec. 54.603. MANDAMUS BY BONDHOLDERS. In the event the board fails or refuses to levy a sufficient tax in each year which, together with other revenues or receipts which may be legally used for these purposes, will be sufficient to pay the required principal of or interest or redemption price on the bonds, notes, or other contractual obligations when due, or to pay the district's other contractual obligations payable from taxes in addition to all other remedies which may be available, the owner of the district's bonds, notes, or other contractual obligations shall be entitled to a writ of mandamus issued by a court of competent jurisdiction to compel the board to levy a sufficient tax to meet the district's obligations to the owners of its bonds, notes, or other contractual obligations.

Added by Acts 1971, 62nd Leg., p. 801, ch. 84, Sec. 1.

Sec. 54.604. ASSESSMENT AND COLLECTION OF DISTRICT TAXES. The assessor and collector shall assess and collect taxes for the district.

Added by Acts 1971, 62nd Leg., p. 801, ch. 84, Sec. 1. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

SUBCHAPTER H. ADDING AND EXCLUDING TERRITORY; CONSOLIDATING AND DISSOLVING DISTRICTS

Sec. 54.728. CONSOLIDATION OF DISTRICTS. Two or more districts governed by the provisions of this chapter may consolidate into one district as provided by Sections 54.729-54.733 of this code.

Added by Acts 1971, 62nd Leg., p. 810, ch. 84, Sec. 1.

Sec. 54.729. ELECTIONS TO APPROVE CONSOLIDATION. (a) After the board of each district has agreed on the terms and conditions of consolidation, which may include the assumption by each district of the bonds, notes, or other obligations and voted but unissued bonds of the other consolidating districts payable in whole or in part from taxation, the levy of taxes to pay for the bonds, and adoption of a name for the consolidated district, the board shall order an election in each district to determine whether the districts should be consolidated.

(b) The directors of each district shall order the election to be held on the same day in each district and shall give notice of the election for the time and in the manner provided by law for bond elections.

(c) The districts may be consolidated only if the electors in each district vote in favor of the consolidation.

Added by Acts 1971, 62nd Leg., p. 810, ch. 84, Sec. 1. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 19, eff. Sept. 1, 1995.

Sec. 54.730. GOVERNING CONSOLIDATED DISTRICTS. (a) After two or more districts are consolidated, they become one district and are governed as one district, except for the payment of debts created before consolidation if the conditions of consolidation do not provide for the assumption by each district of the bonds, notes, or other obligations and voted but unissued bonds of the other consolidating districts.

(b) During a period of 90 days after the date of the election to approve consolidation, the officers of each district shall continue to act jointly as officers of the original districts to settle the affairs of their respective districts.

(c) The consolidation agreement may provide that the officers

of the original districts shall continue to act jointly as officers of the consolidated district until the next general election or name persons to serve as officers of the consolidated district until the next general election if all officers of the original districts agree to resign. At the next general election, directors will be elected for the consolidated district in the same manner and for the same term as directors elected at a confirmation election.

(d) New officers of the consolidated district must qualify as officers of the district within the period of 90 days after the election and shall assume their offices at the expiration of the 90-day period.

(e) The current board shall approve the bond of each new officer.

Added by Acts 1971, 62nd Leg., p. 810, ch. 84, Sec. 1. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 20, eff. Sept. 1, 1995.

Sec. 54.731. DEBTS OF ORIGINAL DISTRICTS. (a) After two or more districts are consolidated, the debts of the original districts shall be protected and may not be impaired. These debts may be paid by taxes levied on the land in the original districts as if they had not consolidated or from contributions from the consolidated district on terms stated in the consolidation agreement.

(b) If each district assumed the other's bonds, notes, and other obligations, taxes may be levied uniformly on all taxable property within the consolidated district in payment of the debts.

Added by Acts 1971, 62nd Leg., p. 811, ch. 84, Sec. 1.

Sec. 54.732. ASSESSMENT AND COLLECTION OF TAXES. After consolidation, the district shall assess and collect taxes on property in the original districts to pay debts created by the original districts unless each district has assumed the bonds, notes, or other indebtedness payable in whole or in part from taxation of the other consolidating districts.

Added by Acts 1971, 62nd Leg., p. 811, ch. 84, Sec. 1. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 21, eff. Sept. 1, 1995.

Sec. 54.733. VOTED BUT UNISSUED BONDS. In the event any consolidating district has voted but unissued bonds payable in whole or in part from taxation and the consolidated district assumed the voted but unissued bonds and the consolidated district was authorized to levy taxes to pay for the bonds, then the consolidated district shall be authorized to issue the voted but unissued bonds in the name of the consolidated district and levy a uniform tax on all taxable property in the consolidated district to pay for the bonds.

Added by Acts 1971, 62nd Leg., p. 811, ch. 84, Sec. 1. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 22, eff. Sept. 1, 1995.

Sec. 54.734. DISSOLUTION OF DISTRICT PRIOR TO ISSUANCE OF BONDS. (a) If the board considers it advisable before the issuance of any bonds, notes, or other indebtedness, the board may dissolve the district and liquidate the affairs of the district as provided in Sections 54.734-54.738 of this code.

(b) If a majority of the board finds at any time before the authorization of bonds, notes, or other obligations or the final lending of its credit in another form that the proposed undertaking for any reason is impracticable or apparently cannot be successfully and beneficially accomplished, the board may issue notice of a hearing on a proposal to dissolve the district.

Added by Acts 1971, 62nd Leg., p. 811, ch. 84, Sec. 1.

Sec. 54.735. NOTICE OF HEARING. The board shall post notice of the hearing on the bulletin board at the courthouse door of each county in which the district is located and at three or more other public places within the boundaries of the district and shall publish notice of the hearing two times in a newspaper with general circulation in the district. The notice must be posted and published at least 14 days before the hearing on the proposed dissolution of the district.

Added by Acts 1971, 62nd Leg., p. 811, ch. 84, Sec. 1.

Sec. 54.736. HEARING. The board shall hear all interested

persons and shall consider their evidence at the time and place stated in the notice.

Added by Acts 1971, 62nd Leg., p. 812, ch. 84, Sec. 1.

Sec. 54.737. BOARD'S ORDER TO DISSOLVE DISTRICT. If the board unanimously determines from the evidence that the best interests of the persons and property in the district will be served by dissolving the district, the board shall enter the appropriate findings and order in its records dissolving the district. Otherwise the board shall enter its order providing that the district has not been dissolved.

Added by Acts 1971, 62nd Leg., p. 812, ch. 84, Sec. 1.

Sec. 54.738. JUDICIAL REVIEW OF BOARD'S ORDER. The board's decree to dissolve the district may be judicially reviewed in the manner set forth in Sections 54.708-54.710 of this code for the review of an order excluding land from the district.

Added by Acts 1971, 62nd Leg., p. 812, ch. 84, Sec. 1.

Sec. 54.739. SUBSTITUTING LAND OF EQUAL VALUE. After the district is organized and has obtained voter approval for the issuance of, or has sold, bonds payable wholly or partly from ad valorem taxes, land within the district boundaries subject to taxation that does not need or utilize the services of the district may be excluded and other land not within the boundaries of the district may be included within the boundaries of the district without impairment of the security for payment of the bonds or invalidation of any prior bond election, as provided by this section and Sections 54.740 through 54.747.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 23, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 248, Sec. 32, eff. June 18, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 30, eff. May

18, 2013.

Sec. 54.740. REQUISITES FOR APPLICATION FOR EXCLUSION. An owner of land in the district not receiving services from the district may apply for its exclusion from the district boundaries if all taxes levied and assessed by the district on the land to be excluded have been fully paid. The application shall set forth facts concerning the land proposed for exclusion, including evidence of the reasonable market value of the land, and state that the other requisites for the exclusion of the land and substitution of other land have been fulfilled or will be fulfilled at the hearing on the application. The application shall be verified and acknowledged in a recordable form as conveyances of real property.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 23, eff. Sept. 1, 1995.

Sec. 54.741. INCLUSION OF SUBSTITUTE LAND REQUIRED. An application for exclusion can only be considered by the board if an application is filed by an owner of other land lying outside the boundaries of the district seeking inclusion of land that can be served in a practical manner by the district of at least equal value to the land proposed for exclusion. Such land must be included within the district boundaries and taxing jurisdiction of the district simultaneously with the exclusion of the land proposed for exclusion. Such included land must be of sufficient acreage to avoid an impairment of the security for payment of voted and issued bonds and any other contract obligations payable or secured, in whole or in part, from ad valorem taxes or revenues of the district.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 23, eff. Sept. 1, 1995.

Sec. 54.742. APPLICATION FOR INCLUSION. The application submitted by an owner of land proposed for inclusion shall set forth that the owner of the new land assumes the payment of all taxes, assessments, and fees levied on the land and assessed by the district after the date the land is included in the district. The application shall also set forth an agreement by the owner of the land proposed for inclusion that the land will be subject to future taxes for bond

tax and other assessments and fees levied and assessed by the district and be subject to the same liens and provisions and statutes governing all other lands in the district as though the land had been incorporated originally in the district. The application for inclusion shall be verified and acknowledged in a recordable form as conveyances of real property.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 23, eff. Sept. 1, 1995.

Sec. 54.743. NOTICE OF HEARING AND HEARING PROCEDURES. The board shall give notice of the hearing on the applications for exclusion and inclusion in conformity with the notice and hearing requirements otherwise applicable to exclusions or additions of land. The board at such hearing shall hear all interested parties and all evidence in connection with the applications.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 23, eff. Sept. 1, 1995.

Sec. 54.744. IMPAIRMENT OF SECURITY. (a) For purposes of the board's consideration of the applications, the lands proposed for inclusion shall be deemed to be sufficient to avoid an impairment of the security for payment of obligations of the district if:

(1) according to the most recent tax roll of the district or the most recently certified estimates of taxable value from the chief appraiser of the appropriate appraisal district, the taxable value of such included lands equals or exceeds the taxable value of the excluded lands; and

(2) either the estimated costs of providing district facilities and services to such included lands is equal to or less than the estimated costs of providing district facilities and services to the excluded lands or any increased estimated costs of providing district facilities and services to the included land, as determined by the district's engineer, can be amortized at prevailing bond interest rates and maturity schedules and the prevailing debt service tax rate of the district, as determined by the district's professional financial advisor, when applied to the increase in taxable value of the included land over the taxable value of the excluded land.

(b) If the district has any outstanding bonds or contract

obligations payable in whole or in part by a pledge of net revenues from the ownership or operation of the district's facilities at the time the board considers an application, the lands proposed for inclusion shall be deemed to be sufficient to avoid an impairment of the security for payment of obligations of the district if the projected net revenues to be derived from the lands to be included during the succeeding 12-month period, as determined by the district's engineer, equals or exceeds the projected net revenues that would otherwise have been derived from the lands to be excluded during the same period.

(c) In this section, the taxable value of included land means the market value of the land if, before or contemporaneously with the inclusion of the land in the district, the owner of the land waives the right to special appraisal of the land as to the district under Section 23.20, Tax Code.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 23, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 248, Sec. 32, eff. June 18, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 31, eff. May 18, 2013.

Sec. 54.745. BOARD'S RESOLUTION TO SUBSTITUTE. If the board finds that all the conditions provided for the exclusion of land and inclusion of other land in the district exist and that it is in the best interest of the district to grant such applications, it may adopt and enter in its minutes a resolution and order excluding all or part of the land proposed for exclusion and including all or part of the land proposed for inclusion. Prior to the effective date of the exclusion and inclusion of lands, the district shall have received payment of all fees, charges, assessments, taxes, together with any associated penalties and interest due or overdue in respect to the lands excluded, and if no ad valorem taxes or fees have yet been established by the district for the current year, an amount determined by the district to equal the estimated ad valorem taxes and standby fees to be established by the district for the current year, prorated to the date of exclusion with respect to such excluded lands, shall also be paid.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 23, eff. Sept. 1, 1995.

Sec. 54.746. LIABILITY OF EXCLUDED AND INCLUDED LAND. The land excluded from the district is free from any lien or liability created on the excluded land by reason of its having been included in the district. Land included in the district is subject to all laws, liens, and provisions governing the district and the land in the district.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 23, eff. Sept. 1, 1995.

Sec. 54.747. SERVICE TO INCLUDED LAND. The district has the same right and obligation to furnish services to the included land that it previously had to furnish to the excluded land.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 23, eff. Sept. 1, 1995.

Sec. 54.748. EXCLUSION OF LAND FOR FAILURE TO PROVIDE SUFFICIENT SERVICES; BONDS OUTSTANDING. (a) This section applies only to a district that has a total area of more than 5,000 acres.

(b) The board shall call a hearing on the exclusion of land from the district on a written petition filed with the secretary of the board by a landowner whose land has been included in and taxable by the district for more than 28 years if any bonds issued by the district payable in whole or in part from taxes of the district are outstanding and the petition:

(1) includes a signed petition evidencing the consent of the owners of a majority of the acreage proposed to be excluded, as reflected by the most recent certified tax roll of the district;

(2) includes a claim that the district has not provided the land with utility services;

(3) describes the property to be excluded;

(4) provides, at the petitioner's expense, facts necessary for the board to make the findings required by Subsection (c); and

(5) is filed before August 31, 2005.

(c) The board may exclude land under this section only on finding that:

(1) the district has never provided utility services to the

land described by the petition;

(2) the district has imposed a tax on the land for more than 28 years;

(3) all taxes the district has levied and assessed against the land and all fees and assessments the district has imposed against the land or the owner that are due and payable on or before the date of the petition are fully paid; and

(4) the executive director has reviewed the economic impact of the proposed exclusion of land and does not oppose the exclusion.

(d) If evidence presented at the hearing conclusively demonstrates that the requirements and grounds for exclusion described by Subsections (b) and (c) have been met, the board may enter an order excluding the land from the district. If the board enters an order excluding the land, the board shall redefine in the order the boundaries of the district to embrace all land not excluded.

(e) A copy of an order excluding land and redefining the boundaries of the district shall be filed in the deed records of the county in which the district is located.

(f) The exclusion of land under this section does not impair the rights of holders of any outstanding bonds, warrants, or other certificates of indebtedness of the district.

(g) After any land is excluded under this section, the district may issue any unissued additional debt approved by the voters of the district before exclusion of the land under this section without holding a new election. Additional debt issued after land is excluded from the district may not be payable from and does not create a lien against the taxable value of the excluded land.

(h) For purposes of this section and Section 54.749, "land" includes any improvements to the land, and when used in the context of property taxes, "land" has the meaning assigned to "real property" by Section 1.04, Tax Code.

Added by Acts 2003, 78th Leg., ch. 248, Sec. 33, eff. June 18, 2003.

Sec. 54.749. TAX LIABILITY OF EXCLUDED LAND; BONDS OUTSTANDING. (a) Land excluded from the district under Section 54.748 that is pledged as security for any outstanding debt of the district remains pledged for its pro rata share of the debt until

final payment is made. The district shall continue to levy and collect taxes on the excluded land at the same rate levied on land remaining in the district until the amount of taxes collected from the excluded land equals the land's pro rata share of the district's debt outstanding at the time the land was excluded from the district.

(b) The district shall apply the taxes collected on the excluded land only to the payment of the excluded land's pro rata share of the debt.

Added by Acts 2003, 78th Leg., ch. 248, Sec. 33, eff. June 18, 2003.

SUBCHAPTER J. SERVICES FOR CERTAIN DEFINED AREAS AND DESIGNATED PROPERTY

Sec. 54.801. AUTHORITY TO ESTABLISH DEFINED AREAS OR DESIGNATED PROPERTY. (a) A district that is composed of at least 1,000 acres may define areas or designate certain property of the district to pay for improvements, facilities, or services that primarily benefit that area or property and do not generally and directly benefit the district as a whole.

(b) The board shall state in its designation the physical and economic reasons, the particular diverse local needs, or the comparative potential benefits of the defined areas or designated property in the district that make it necessary or equitable to levy all or part of the tax on a defined area or designated property of the district.

Added by Acts 1987, 70th Leg., ch. 600, Sec. 1, eff. Aug. 31, 1987.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 11, eff. September 1, 2019.

Sec. 54.802. DEFINING AREA AND DESIGNATING PROPERTY TO BE BENEFITED BY IMPROVEMENTS. (a) The board shall adopt a proposed plan that defines the particular area to be taxed by metes and bounds or designates the property to be served, affected, and taxed.

(b) The board shall file an engineer's report for improvements in the defined area or to serve the designated property.

(c) The board shall adopt a proposed plan of taxation to apply to the defined area or designated property that may or may not be in

addition to other taxes imposed by the district on the same area or property.

Added by Acts 1987, 70th, Leg., ch. 600, Sec. 1, eff. Aug. 31, 1987.
Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 32, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 12, eff. September 1, 2019.

Sec. 54.804. ORDER ADOPTING PLANS FOR DEFINED AREA OR DESIGNATED PROPERTY. (a) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 24, eff. September 1, 2019.

(b) If the board adopts a proposed plan, it must adopt the definition or designation that it finds, according to the evidence before the board, most equitably distributes the cost of facilities or service and protects the public welfare.

(c) If the proposal includes the issuance of bonds or the imposition of a maintenance tax for the defined area or designated property, the board shall call and hold an election in the defined area or within the boundaries of the designated property only.

(d) The board's order is not subject to judicial review except on the ground of fraud, palpable error, or arbitrary and confiscatory abuse of discretion.

Added by Acts 1987, 70th Leg., ch. 600, Sec. 1, eff. Aug. 31, 1987.
Amended by Acts 1989, 71st Leg., ch. 973, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 24, eff. September 1, 2019.

Sec. 54.805. OBTAINING FUNDS TO CONSTRUCT, ADMINISTER, MAINTAIN, AND OPERATE IMPROVEMENTS AND FACILITIES IN DEFINED AREAS OR DESIGNATED PROPERTY. On adoption of the proposed plan as provided by this subchapter and voter approval of the imposition of taxes and issuance of bonds, the district, under the limitations of this subchapter, may apply separately, differently, equitably, and specifically its taxing power and lien authority to the defined area or designated property to provide money to construct, administer,

maintain, and operate improvements and facilities that primarily benefit the defined area or designated property.

Added by Acts 1987, 70th Leg., ch. 600, Sec. 1, eff. Aug. 31, 1987.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 13, eff. September 1, 2019.

Sec. 54.806. PROCEDURE FOR ELECTION. (a) Before bonds may be issued or taxes may be imposed for the defined area or designated property, the bonds or taxes must be approved by the voters in the defined area or within the boundaries of the designated property. The election shall be conducted as provided by Section 49.106 for an election to authorize the issuance of bonds or Section 49.107 for an election to authorize the imposition of an operation and maintenance tax.

(b) The board may submit the issues to the voters on the same ballot to be used in another election.

(c) The notice of election must describe the area to be defined or property to be designated and must otherwise conform to the provisions of this chapter relating to notice of bond elections.

Added by Acts 1987, 70th Leg., ch. 600, Sec. 1, eff. Aug. 31, 1987.
Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 33, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 14, eff. September 1, 2019.

Sec. 54.809. ISSUANCE OF BONDS AND IMPOSITION OF TAX FOR DEFINED AREA OR DESIGNATED PROPERTY. After approval by the voters, the district may issue bonds and impose taxes to provide the specific plant, works, and facilities included in the engineer's report for the defined area, or to serve the designated property.

Added by Acts 1987, 70th Leg., ch. 600, Sec. 1, eff. Aug. 31, 1987.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 15, eff. September 1, 2019.

Sec. 54.810. LIMITATION ON OTHER BOND AUTHORIZATIONS. If the voters of the designated area authorize the issuance of bonds for a particular purpose, a district may not issue bonds from any other authorization for the same purposes, and only revenue and taxes from the designated area may be used to retire the bonds.

Added by Acts 1987, 70th Leg., ch. 600, Sec. 1, eff. Aug. 31, 1987.

Sec. 54.811. PLEDGE OF FAITH AND CREDIT. If at an election, the voters approve the issuance of bonds and the levy of a tax that applies only to a designated area, the district may issue bonds that pledge only the faith and credit based on the property values in the defined area and may not pledge the full faith and credit of the district.

Added by Acts 1987, 70th Leg., ch. 600, Sec. 1, eff. Aug. 31, 1987.

Sec. 54.812. NOTICE TO PURCHASERS. (a) A person who sells or conveys real property located within the designated area of the district shall supplement the notice to purchaser required by Section 50.301, of this code, as provided by this section.

(b) The prescribed notice shall be inserted into the general notice after the first sentence and shall read substantially as follows: "The real property described below, which you are about to purchase, may also be located within a defined area of the district and the land may be subject to defined area taxes in addition to the other taxes of the district. As of this date, the additional rate of taxes within the defined area is $_____ on each $100 of assessed valuation."

Added by Acts 1987, 70th Leg., ch. 600, Sec. 1, eff. Aug. 31, 1987.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 16, eff. September 1, 2019.

Sec. 54.813. MUNICIPALITY'S AUTHORITY REGARDING DEFINED AREA.

(a) This section applies only to a municipality any portion of which is located in a county with a population of more than 1 million and less than 1.5 million.

(b) A municipality may not annex a part of a defined area in a district that has adopted a plan for the defined area under this subchapter unless:

(1) 90 percent or more of all facilities and infrastructure described by the plan has been installed and completed; and

(2) the municipality:

(A) annexes all of the defined area that is within the municipality's extraterritorial jurisdiction; and

(B) assumes the pro rata share of the bonded indebtedness of the annexed area.

(c) After the annexation occurs:

(1) the annexed area is not eligible to be a defined area under this subchapter; and

(2) the district may not impose in the annexed area a tax authorized for a defined area under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 962 (H.B. 1644), Sec. 6, eff. June 18, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 185, eff. September 1, 2011.

CHAPTER 55. WATER IMPROVEMENT DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 55.001. DEFINITIONS. In this chapter:

(1) "District" means a water improvement district created under this chapter.

(2) "Board" means the board of directors of a water improvement district.

(3) "Commission" means the Texas Natural Resource Conservation Commission.

(4) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

Acts 1971, 62nd Leg., p. 428, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.144, eff. Sept. 1,

1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.078, eff. Aug. 12, 1991.

SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION TO ARTICLE XVI, SECTION 59, DISTRICT

Sec. 55.021. CREATION OF DISTRICT. A water improvement district may be created in the manner prescribed by this subchapter, either under and subject to the limitations of Article III, Section 52, of the Texas Constitution, or under Article XVI, Section 59, of the Texas Constitution.

Acts 1971, 62nd Leg., p. 428, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.022. DISTRICT WHOLLY WITHIN ONE COUNTY. The commissioners court of a county, at any regular or called session, may create one or more water improvement districts in the county as provided by this subchapter.

Acts 1971, 62nd Leg., p. 428, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.023. DISTRICT MAY INCLUDE CITIES, TOWNS, ETC. A district may include all or part of one or more cities, towns, villages, and municipal corporations, but no land may be included in more than one district at any one time.

Acts 1971, 62nd Leg., p. 428, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.024. PETITION. (a) A petition requesting creation of a district may be presented to the commissioners court. The petition must be signed by a majority of the persons who hold title to land in the proposed district, representing a total value of more than 50 percent of the value of all the land in the proposed district as indicated by the county tax rolls. However, if there are more than 50 persons holding title to land in the proposed district, the petition is sufficient if signed by 50 of them. The petition must set out the boundaries of the district and designate a name for the district.

(b) The petition may be signed and presented to the commissioners court in several copies. In this case the county clerk shall make a certified copy of the petition, including a list of the names of all signers, and shall file the certified copy and the original copies. The certified copy of the petition shall be considered the petition in all proceedings under this chapter.

Acts 1971, 62nd Leg., p. 428, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.025. DATE SET FOR HEARING. The commissioners court shall set a date for a hearing on the petition, to be held at a regular or special session not less than 15 days nor more than 40 days after the day the petition is presented.

Acts 1971, 62nd Leg., p. 429, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.026. NOTICE OF HEARING. (a) The county clerk shall issue a notice of the hearing directed to the sheriff giving the date and place of the hearing, and a copy of the order of the court setting the hearing. The sheriff shall serve the notice in the manner provided by law.

(b) The sheriff shall post copies of the notice in three public places in the proposed district, and shall post one copy at the courthouse door or on the bulletin board used for public notices. These notices shall be posted for 10 full days before the date of the hearing. The notice shall also be published once in a newspaper of general circulation in the county, if a newspaper is published in the county, at least five days before the date of the hearing. The sheriff shall make return of a true copy of the notice, showing the times and places of posting and publication. The county clerk shall record the return in the minutes of the court.

(c) Any person interested may inspect the boundaries of the district as set out in the petition, and any person may inspect the petition in the office of the county clerk.

Acts 1971, 62nd Leg., p. 429, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.027. HEARING. (a) At the hearing, any person whose

land is included in and would be affected by the district may support or oppose creation of the district and may offer testimony to show that the district is or is not necessary, would or would not be of public utility, or would or would not be feasible or practicable.

(b) Except as otherwise provided by this chapter, the commissioners court has exclusive jurisdiction to hear and determine all contests and objections to creation of the district and all other matters pertaining to creation of the district.

(c) The commissioners court may adjourn the hearing from day to day.

(d) The judgment rendered by the commissioners court is final, except as otherwise provided by this chapter.

Acts 1971, 62nd Leg., p. 429, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.028. FINDINGS; ORDER. The commissioners court shall make and enter its findings in the record. If it finds that creation of the district and the construction or purchase of the proposed irrigation system, or cooperation with the United States as provided by Section 55.161 of this code, is feasible, practicable, and necessary, and would be a public benefit and a benefit to the land included in the district, then the court shall make and enter an order granting the petition and directing that an election be held in the proposed district. Otherwise, the court shall dismiss the petition at the cost of the petitioners.

Acts 1971, 62nd Leg., p. 430, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.029. APPEAL. (a) Any petitioner or any landowner in the district aggrieved by the order of the commissioners court may appeal the order to the district court. Notice of appeal must be filed with the commissioners court at the time of the hearing, and an appeal bond must be filed with the county clerk within 10 days after the day notice of appeal is given. At the time notice of appeal is given, the commissioners court shall fix the amount of the appeal bond at not less than $2,000 nor more than $5,000; and the bond shall be made payable to the county judge for the benefit of adverse parties.

(b) Except as otherwise provided by this section, the appeal

shall be tried de novo under the rules prescribed for practice in the district court and shall be de novo.

(c) The county clerk shall transfer to the district clerk the judgment and all records filed in the commissioners court within 10 days after the day the appeal bond is filed, and no other pleadings need be filed.

(d) The final judgment on appeal shall be certified to the commissioners court for its action within 10 days after the day the judgment becomes final.

Acts 1971, 62nd Leg., p. 430, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.031. VOTING PRECINCTS. (a) The commissioners court, at the time it orders the election, shall order creation of one or more election precincts in the district and shall designate polling places in each precinct.

(b) The election precincts created under this section shall remain the election precincts of the district until changed by an order of its board.

Acts 1971, 62nd Leg., p. 430, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.032. ELECTION OFFICIALS. The commissioners court shall appoint two judges and two clerks for each polling place, and designate one of the judges to be presiding judge. If an officer fails to serve, his place shall be filled in the manner provided by the general election law.

Acts 1971, 62nd Leg., p. 430, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.037. DIRECTORS. The commissioners court shall declare the five persons receiving the most votes to be elected directors. If not all five positions can be determined because of a tie vote, the commissioners court shall fill the necessary positions by selecting among the tying candidates.

Acts 1971, 62nd Leg., p. 431, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.038. ISSUANCE OF NOTES. (a) If the proposition to issue notes carries, the board of directors shall issue notes of the district, in an amount not to exceed four percent of the cost of the proposed improvements, for the purpose of creating a fund to pay the cost of organizing the district and the cost of all surveys, investigations, engineering, issuance of bonds, making and filing of maps and reports, legal expenses, and all other costs and expenses authorized or made necessary by the provisions of this chapter. The board shall sell the notes or exchange them in payment of the costs and expenses.

(b) The notes shall be secured by the levy, assessment, and collection of taxes as provided for payment of bonds. The notes shall be paid out of the proceeds of the district's bonds when they are issued and sold. If the bond election fails to carry, then the notes shall be paid out of the tax revenue.

Acts 1971, 62nd Leg., p. 431, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.039. RECORDATION OF ORDER. (a) After the commissioners court makes and enters in its minutes the order creating the district or an order changing the name of a district, the court shall file a certified copy of the order accompanied by a plat defining the district boundaries with the county clerk.

(b) The county clerk shall have the certified copy of the order and the plat recorded and indexed in the deed records of the county.

(c) Recordation of the order and plat has the same effect, as to notice, as the recordation of a deed.

(d) The district shall pay the cost of making and recording the certified copy of the order and the plat.

Acts 1971, 62nd Leg., p. 432, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1991, 72nd Leg., ch. 187, Sec. 5, eff. Sept. 1, 1991.

Sec. 55.040. MULTI-COUNTY DISTRICT: PETITION. Creation of a district composed of land in two or more counties may be initiated by presenting a petition to the commission signed by the owners of more than half the land in the proposed district or by 50 qualified property taxpaying electors of the territory of the proposed district. The petition shall describe the boundaries of the proposed

district and request an order on the advisability of creating the district and an order for an election.

Acts 1971, 62nd Leg., p. 432, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1997, 75th Leg., ch. 1070, Sec. 34, eff. Sept. 1, 1997.

Sec. 55.042. MULTI-COUNTY DISTRICT: HEARING. If the commission determines that a hearing is necessary under Section 49.011, the commission shall conduct a hearing and any person whose land would be affected by creation of the district may appear and support or oppose creation of the proposed district, and may offer competent testimony to show that the district would or would not serve a beneficial purpose, be practicable, or accomplish the purposes intended.

Acts 1971, 62nd Leg., p. 432, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 35, eff. Sept. 1, 1997.

Sec. 55.043. MULTI-COUNTY DISTRICT: FINDINGS. (a) If the commission finds that the plan of water conservation, irrigation, and use presented in the petition is practicable and would be a public utility, the commission shall enter the findings in its records and shall send a certified copy of the findings to the commissioners court in each county in which part of the proposed district is located. The commission shall also inform each commissioners court of a date set by the commission on which an election shall be held in the area of the proposed district to determine whether the district will be created and to elect five directors for the district.

(b) If the commission finds that creation of the district is not practicable, that it would not serve a beneficial purpose, and that it would not be possible to accomplish through its creation the purposes proposed, the commission shall enter its findings in its records and shall dismiss the petition.

Acts 1971, 62nd Leg., p. 432, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.044. MULTI-COUNTY DISTRICT: NOTICE OF ELECTION. On receiving a certified copy of the findings of the commission authorizing the election, the commissioners court of each county shall have notices of the election posted, in the manner provided for an election to create a single-county district, for not less than 15 nor more than 30 days before the date of the election.

Acts 1971, 62nd Leg., p. 432, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.045. MULTI-COUNTY DISTRICT: RULES GOVERNING ELECTION. Except as provided by the succeeding sections, the election shall be held, the returns made and canvassed, and the results declared, as provided in the case of a single-county district.

Acts 1971, 62nd Leg., p. 433, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.046. MULTI-COUNTY DISTRICT: ELECTION RETURNS, CANVASS, RESULT. (a) The commission shall designate the county judge of one of the counties in the proposed district to act as a canvassing board to receive and canvass the votes cast and to declare the result of the election.

(b) In each county, the officers appointed by the commissioners court to hold the election shall return the results to the commissioners court and shall return all ballot boxes to the county clerk.

(c) On receiving the returns of the election, the commissioners court shall canvass the returns and certify the result of the election in the county to the county judge appointed to act as canvassing board.

(d) When the county judge receives the returns from all the counties, he shall canvass the returns and certify the result of the election to the commissioners court of each county, which shall enter the result of the election in its permanent records.

(e) If the proposition to create the district is carried, the county judge acting as the canvassing board shall make and transmit to each commissioners court an appropriate order declaring that the district is created and describing it boundaries. He shall also issue certificates of election to the persons elected as directors, who shall proceed with the organization of the district as otherwise

provided by this chapter.

Acts 1971, 62nd Leg., p. 433, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.047. EXCLUSION OF CITY, UNINCORPORATED AREA, OR COUNTY VOTING AGAINST DISTRICT. (a) As used in this section:

(1) "city" includes town or other municipal corporation; and

(2) "unincorporated area" means an area not included within the boundaries of a city.

(b) Each city included within the boundaries of the proposed district shall be treated as a separate voting unit, and the votes cast in the city shall be counted and canvassed to show the result of the election in the city. No city shall be included in the district unless the majority of the votes cast in the city favor creation of the district.

(c) If the proposed district includes both incorporated and unincorporated areas in a county, the unincorporated area shall not be included in the district unless the majority of the votes cast in the unincorporated area favor creation of the district.

(d) No district, the major portion of which is in one county, shall be organized to include land in another county unless the majority of the votes cast in the other county favor creation of the district.

(e) If any portion of a proposed district, under the provisions of this section, votes against creation of the district, and the remaining area of the proposed district votes for the district, then the proposition shall be adopted and the district confirmed except as to the territory voting against the district.

(f) All property in the territory of the district as originally proposed is subject to taxation for the payment of all debts and obligations, including organization expenses, incurred while part of the district.

(g) If at least 10 percent of the qualified electors of the area remaining in the district file a petition with the board of directors requesting a new election on creation of the district, then a new election shall be ordered and held for the remaining area, or the district organization may be dissolved by order of the board of directors and a new district formed.

Acts 1971, 62nd Leg., p. 433, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.048. NAME OF DISTRICT. (a) The name of a district wholly within one county shall include the name of the county and a number. Districts wholly within one county shall be numbered consecutively as created, and no two districts may have the same number.

(b) The name of a district with territory in two or more counties may include the names of those counties, or the district may adopt any appropriate name. The name may include a number, but the number may not be the same as the number of a district in any of the counties. The number of a district created in any county may not be the same as the number of a district with territory in that county and other counties.

Acts 1971, 62nd Leg., p. 434, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.049. SURVEY OF DISTRICT BOUNDARIES. Immediately after the directors are qualified, the board shall order a survey of the boundaries of the district to be made according to the boundaries designated in the petition for creation of the district, or the board shall adopt, in whole or in part, the boundaries already established, and order the boundaries marked by suitable monuments.

Acts 1971, 62nd Leg., p. 434, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.050. CHAPTER APPLICABLE TO IRRIGATION DISTRICTS. Irrigation districts created under the laws of 1905, 1913, and 1915 (Chapter 50, Acts of the 29th Legislature, 1905; Chapter 172, Acts of the 33rd Legislature, 1913; and Chapter 138, Acts of the 34th Legislature, 1915), are governed by the provisions of this chapter.

Acts 1971, 62nd Leg., p. 434, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.051. CHANGE OF DISTRICT NAME. (a) An irrigation district created under the law of 1905, 1913, or 1915 (Chapter 50, Acts of the 29th Legislature, 1905; Chapter 172, Acts of the 33rd

Legislature, 1913; and Chapter 138, Acts of the 34th Legislature, 1915), may change the name of the district to the name provided in this chapter by filing a declaration to change the name with the commissioners court of the county in which the district is located.

(b) The declaration to change the district's name shall be in the form of a deed of conveyance and shall be acknowledged by the president and secretary of the board. It shall include a copy of the minutes of the board and the resolution adopted to change the name.

(c) After the declaration is recorded, the name of the district shall be changed.

Acts 1971, 62nd Leg., p. 434, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.053. CONVERSION OF ARTICLE III, SECTION 52 DISTRICT TO ARTICLE XVI, SECTION 59 DISTRICT. (a) A water improvement district created subject to the limitations of Article III, Section 52, of the Texas Constitution, may be converted into a water improvement district operating under the authority of Article XVI, Section 59, of the Texas Constitution, as provided by this section.

(b) On the petition of 20 percent of the owners of land in the district, the board of directors shall order an election to determine whether the district shall be converted to a district operating under Article XVI, Section 59, of the Texas Constitution. The election shall be conducted under the rules applicable to general elections in the district. The ballots shall be printed to provide for voting for or against: "Conservation and Reclamation."

(c) The board shall canvass the returns, make an order declaring the result of the election, and have the order recorded in the deed records of the county or counties in which the district is located. If the result of the election is affirmative, the district begins operating under Article XVI, Section 59, of the Texas Constitution, without change of name or impairment of its obligations, when the order is recorded.

Acts 1971, 62nd Leg., p. 435, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 55.101. BOARD OF DIRECTORS. The governing body of a district is a board of five directors.

Acts 1971, 62nd Leg., p. 435, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 24, eff. Sept. 1, 1995.

Sec. 55.102. QUALIFICATIONS OF DIRECTORS. To be qualified for election as a director, a person must be a resident of the state, own land subject to taxation in the district, and be at least 18 years of age at the time of the election. Section 49.052 does not apply to a district governed by this chapter whose principal purpose is providing water for irrigation.

Acts 1971, 62nd Leg., p. 435, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 25, eff. Sept. 1, 1995.

Sec. 55.103. APPLICATION TO GET ON BALLOT. (a) A person qualified to serve as a director may file an application with the secretary to have the applicant's name printed on the election ballots. The application must be signed by the applicant or by at least 10 qualified electors of the district and must be filed not later than 5 p.m. of the 45th day before the date of the election.

(b) Only persons for whom applications are filed under this section may have their names printed on the ballots. However, nothing in this section prevents write-in votes.

Acts 1971, 62nd Leg., p. 435, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1989, 71st Leg., ch. 1009, Sec. 3, eff. Sept. 1, 1989.

Sec. 55.107. OPTIONAL CONVERSION TO STAGGERED TERMS. (a) The board, by resolution adopted before December 1 of any year on the vote of at least four directors, may adopt the system of staggered two-year terms of office as provided by this section.

(b) On the first available election date as provided by Article 2.01b of Vernon's Texas Election Code in the first even-numbered year immediately succeeding adoption of the resolution, five directors shall be elected. Of the five elected, the two receiving the fewest votes shall serve for two years and the other three shall serve for

four years. However, if the vote is such that two of them do not receive fewer votes than the other three, then the directors shall determine by lot which two will serve two years and which three will serve four years.

(c) After the election provided for in Subsection (b) of this section, on the same date in each following even-numbered year there shall be an election to elect successors for the directors whose terms expire, to hold office for terms of four years.

Acts 1971, 62nd Leg., p. 436, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 981, ch. 367, Sec. 25, eff. June 10, 1981; Acts 1983, 68th Leg., p. 5215, ch. 951, Sec. 8, eff. Jan. 1, 1984.

Sec. 55.108. APPOINTMENT OF DIRECTORS IN CERTAIN DISTRICTS. (a) If the petition to create a district proposes a district which would contain no more than 12,000 acres of land, and if at least 60 percent of the land is owned by persons who do not reside in the district, the petition may request that the directors be appointed by the commissioners court. If so, the directors shall be appointed instead of elected. The commissioners court shall appoint the directors at the time otherwise fixed for electing directors, or if the court is not in session at that time, it shall appoint the directors as soon as possible.

(b) The owners of land in the district may file petitions with the commissioners court expressing their choice of persons to be selected as directors. If the owners of at least 60 percent of the land agree on the persons to be appointed, the commissioners court shall appoint those persons. Otherwise, the court shall appoint suitable, qualified persons as directors.

Acts 1971, 62nd Leg., p. 436, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.110. ADDITIONAL BONDS. (a) If a district is appointed fiscal agent of the United States or is authorized to collect money for and in behalf of the United States in connection with any federal reclamation project, the assessor and collector and each director shall execute an additional bond in an amount set by the secretary of the interior, conditioned on the faithful performance of the duties

of his office and the faithful performance by the district of its duties as fiscal or other agent of the United States.

(b) The additional bonds shall be approved, recorded, and filed as provided for other official bonds. The additional bonds may be sued on by the United States or by any person injured by failure of the officer or the district to perform fully, promptly, and completely the required duties.

Acts 1971, 62nd Leg., p. 437, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 55.161. PURPOSES OF DISTRICT. (a) A water improvement district may provide for irrigation of the land within its boundaries.

(b) A district operating under Article XVI, Section 59, of the Texas Constitution, may furnish water for domestic, power, and commercial purposes.

(c) A district may be formed to cooperate with the United States under the federal reclamation laws for the purpose of:

(1) construction of irrigation and drainage facilities necessary to maintain the irrigability of the land;

(2) purchase, extension, operation, or maintenance of constructed facilities; or

(3) assumption, as principal or guarantor, of indebtedness to the United States on account of district lands.

Acts 1971, 62nd Leg., p. 440, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.163. IMPROVEMENTS: PURCHASE OR CONSTRUCTION. A district may purchase or construct improvements and facilities necessary for irrigation of land in the district, and if operating under Article XVI, Section 59, of the Texas Constitution, improvements and facilities necessary to supply, deliver, and sell water for domestic, power, and commercial purposes.

Acts 1971, 62nd Leg., p. 441, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.165. DRAINAGE DITCHES: LEVEES. The board may include

in the plans of the district the necessary drainage ditches, or other facilities for drainage, and levees for the protection of land in the district. The district may purchase all or part of any system belonging to a drainage district. However, the purchase contract shall provide for paying or assuming the debts of the drainage district, and the amount of the debts paid or assumed shall be considered in determining the bond-issuing capacity of the district.

Acts 1971, 62nd Leg., p. 441, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.166. CONSTRUCTING BRIDGES AND CULVERTS ACROSS AND OVER COUNTY AND PUBLIC ROADS. The district shall build necessary bridges and culverts across and over district canals, laterals, and ditches which cross county or public roads. Funds of the district shall be used to construct the bridges and culverts.

Acts 1971, 62nd Leg., p. 441, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.167. CONSTRUCTING CULVERTS AND BRIDGES ACROSS AND UNDER RAILROAD TRACKS AND ROADWAYS. (a) The district, at its own expense, may build necessary bridges and culverts across or under any railroad tracks or roadways to enable the district to construct and maintain any canal, lateral, or ditch which is a necessary part of its improvements.

(b) Before the district proceeds to build bridges and culverts, the board shall deliver to the legal agent, division superintendent, or roadmaster written notice. The railroad company shall have 30 days in which to build the bridges and culverts at its own expense and according to its own plans.

(c) The bridges and culverts shall be placed at points designated by the board or the district engineer and shall be constructed so that they will not interfere with the free and unobstructed flow of water passing through the canal or ditch.

Acts 1971, 62nd Leg., p. 441, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.185. CONTRACT WITH THE UNITED STATES. The board may enter into a contract or other obligation with the United States for

the following purposes:

(1) to construct, operate, and maintain necessary facilities to deliver and distribute water;

(2) to drain district land;

(3) to assume debt for district land;

(4) to rent temporarily United States water for use on district land under the federal reclamation laws; or

(5) to furnish a water supply to the district under any act of Congress which authorizes it.

Acts 1971, 62nd Leg., p. 445, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.186. PAYMENTS MADE BY A DISTRICT UNDER A CONTRACT WITH THE UNITED STATES. (a) If a district enters into a contract with the United States, the district may deposit with the United States district bonds at 90 percent of par value to pay the amount owed by the district under the contract. The district shall pay interest on the bonds in the same manner that other bonds of the district are paid. Interest shall be paid regularly to the United States and applied in the manner provided in the contract.

(b) If bonds are not deposited as provided in Subsection (a) of this section, the board shall include in any levy or assessment made by the district an amount sufficient to make annual payments under the terms of the contract.

Acts 1971, 62nd Leg., p. 445, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.187. DISTRICT AS FISCAL AGENT FOR UNITED STATES. The board may accept on behalf of the district appointment as the fiscal agent for the United States on any federal reclamation project. As fiscal agent, the district may assume the duties and perform the acts incident to this capacity and shall do anything required by federal statutes and rules and regulations established by any department of the federal government.

Acts 1971, 62nd Leg., p. 445, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.188. CONVEYING PROPERTY TO THE UNITED STATES. If the

district enters into a contract with the United States, the board may convey to the United States any property which is necessary for constructing, operating, and maintaining improvements for the benefit of the district.

Acts 1971, 62nd Leg., p. 445, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.192. ACQUIRING WATER RIGHTS. Any district may acquire water rights in the manner provided by law.

Acts 1971, 62nd Leg., p. 446, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.193. SELLING WATER RIGHTS. (a) Any district which has a permit issued by the commission to construct a reservoir and to appropriate water from a stream or watershed for irrigation or other purposes may convey to another district an interest in the reservoir or water rights.

(b) The conveyance shall be recorded in the office of the county clerk of the county in which the property is located and in the office of the executive director.

(c) The conveyance, when filed, shall convey all rights in the interest conveyed which were held under the permit by the district conveying the interest.

(d) After the conveyance is filed in the office of the executive director, the rights conveyed vest in the district to which the conveyance was made as if the rights were granted directly by the commission.

Acts 1971, 62nd Leg., p. 446, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981.

Sec. 55.194. TRANSFER OF WATER RIGHT. If there is land in a district which has a water right from a source of supply acquired by the district but the land is difficult or impracticable to irrigate from that source of supply, the district may allow transfer of the water right to other land which is adjacent to the district. The adjacent land may be admitted to the district with the same right of

water service as other land already in the district.

Acts 1971, 62nd Leg., p. 446, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.195. SUPPLYING WATER TO CITIES OUTSIDE THE DISTRICT. When a district acquires an established irrigation system which supplies water to landowners in a city, town, or village which is not included in the district, the district shall continue to supply water to the landowners at a reasonable annual rate.

Acts 1971, 62nd Leg., p. 447, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.196. SELLING WATERPOWER PRIVILEGES. The district may enter into a contract to sell waterpower privileges if power can be generated from water flowing from the district's reservoirs and irrigation system. The sale of waterpower privileges may not interfere with the district's obligation to furnish an adequate supply of water for irrigation and for municipal purposes in districts which furnish water for municipal purposes.

Acts 1971, 62nd Leg., p. 447, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.197. SELLING SURPLUS WATER. The district may sell to any person who owns or uses land in the vicinity of the district any surplus district water for use in irrigation or for domestic or commercial uses.

Acts 1971, 62nd Leg., p. 447, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.198. PUMPING AND DELIVERING WATER TO LAND NEAR DISTRICT. The district may enter into a contract with a person who owns or uses land in the vicinity of the district and who has a permit from the commission to appropriate water for use in irrigation or for domestic or commercial uses to pump or deliver the water to the person's land.

Acts 1971, 62nd Leg., p. 447, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981.

Sec. 55.200. SALE OF LAND ACQUIRED BY A DISTRICT FOR OTHER THAN DISTRICT PURPOSES. The district may sell to the highest bidder at a public sale any land acquired by the district through foreclosure of liens for maintenance and operation assessments or acquired by the district for any purpose other than carrying out its plans. The board may use proceeds from the sale for making improvements in the district, for maintenance and operation of the district's system, or for carrying on district business.

Acts 1971, 62nd Leg., p. 447, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.201. USE OF EXCESS DISTRICT MONEY. After all district improvements are completed and all expenses are paid, the board may use any remaining money to preserve, maintain, and repair district improvements.

Acts 1971, 62nd Leg., p. 448, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.202. BOARD'S SEMIANNUAL REPORT. On the first day of January and July of each year, the board shall make and verify a report which shows in detail the kind, character, and amount of improvements constructed in the district, the cost of the improvements, the amount of each warrant paid, the person to whom each warrant was paid, the purpose for which each warrant was paid, and other data necessary to show the condition of improvements made. The report shall be filed with the county clerk in the county or counties in which the district is located and made available for public inspection.

Acts 1971, 62nd Leg., p. 448, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.204. WAIVER OF DISTRICT TORT IMMUNITY. If the board finds that it is in the best interest of the district and that it is necessary to enable the district to enter into a contract to employ

Mexican laborers, it may enter into a written contract to waive in advance the district's immunity from liability in damages for personal injuries and sickness which is proximately caused by torts of the district or negligence of agents or employees of the district and which is suffered by Mexican laborers employed by the district under the terms of the Migrant Labor Agreement of 1951 between the United States and Mexico or any subsequent agreement of a similar nature.

Acts 1971, 62nd Leg., p. 448, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER E. REGULATORY POWERS

Sec. 55.241. PURPOSE. The powers granted to the district and its board under this subchapter are for the purpose of helping the district to maintain the purity of district water, to protect the preservation and use of the water, to protect the lives of persons who desire to go on, over, or across the water, and to insure the safety of persons using the water.

Acts 1971, 62nd Leg., p. 448, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.242. RULES AND REGULATIONS. The board may make and adopt reasonable rules and regulations which are necessary

(1) to preserve the sanitary condition of water controlled by the district;

(2) to prevent waste or unauthorized use of water; and

(3) to regulate residence, boating, camping, and recreational and business privileges on any land or water owned or controlled by the district.

Acts 1971, 62nd Leg., p. 449, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.243. NOTICE OF RULES AND REGULATIONS. (a) Before a rule or regulation providing for a penalty may be effective, the district must publish a substantial statement of the rule or regulation and the penalty in one or more newspapers with general circulation in the district once a week for two consecutive weeks.

(b) The published statement shall be as condensed as possible

so that the object to be accomplished or the act which is forbidden by the rule or regulation can be easily understood.

(c) The publication of notice may include notice of any number of rules and regulations.

(d) The notice shall include a statement that the violation of a rule or regulation will subject the person who violates it to a penalty and that a complete copy of the rule or regulation is on file in the principal office of the district and may be inspected.

(e) A rule or regulation shall be effective five days after the second publication of the notice, and ignorance of the rule or regulation does not constitute a defense to prosecution for enforcement of the penalty.

Acts 1971, 62nd Leg., p. 449, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.244. JUDICIAL NOTICE OF RULES AND REGULATIONS. The courts shall take judicial notice of rules and regulations made and adopted under this subchapter. The rules and regulations shall be considered to be similar in nature to valid penal ordinances of a city.

Acts 1971, 62nd Leg., p. 449, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.245. CONTRACTS FOR TOLL BRIDGES AND FERRY SERVICES. (a) The board has the exclusive right to enter into a contract with any responsible person to construct and operate toll bridges over water regulated by the district or to provide ferry service or other means of passenger transportation on water regulated by the district.

(b) A contract for construction and operation of a toll bridge may not extend for a period of more than 20 years and a contract providing for ferry service or other types of transportation may not extend for a period of more than 10 years.

(c) The contract may provide for forfeiture of the franchise or rights granted for failure of the licensee or other contracting party to render adequate and safe public service.

Acts 1971, 62nd Leg., p. 449, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.246. BOND. The board shall require any person with whom it enters into a contract under Section 55.245 of this code to execute an adequate bond in an amount not to exceed $1,000, payable to the district and conditioned as the board requires.

Acts 1971, 62nd Leg., p. 450, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.247. LICENSE, FRANCHISE, AND FEE. (a) Before a person may keep or operate for hire on district water a ferry or other type of transportation, the person must obtain a license or franchise from the board.

(b) The board may fix the fee to be charged for the license or franchise in an amount not to exceed $250 a year, and shall fix the fee according to the type of boat used.

Acts 1971, 62nd Leg., p. 450, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.248. CHARGES FOR USE OF TOLL BRIDGE FACILITIES AND FERRY SERVICE. The board may fix a reasonable amount of compensation to be charged by the owner or operator of a toll bridge or a ferry service or other type of transportation service for use of the facilities.

Acts 1971, 62nd Leg., p. 450, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.249. REGULATING BOATS. (a) The district may prescribe the type of boats to be used on district water to carry persons for hire and for recreational purposes and may require the owner of a boat to submit the boat at a reasonable time to inspection to determine if the boat is serviceable.

(b) In an effort to protect the lives of the occupants of boats and persons using district water, the district may prescribe reasonable requirements for the use and manner in which they are used.

Acts 1971, 62nd Leg., p. 450, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.250. RESPONSIBILITIES OF BOAT OWNERS AND OPERATORS. (a) The owner or operator of a boat used as a ferry or other type of transportation shall keep the boat and boat landings in good and safe condition.

(b) The district is not liable for any negligent act or failure of duty on the part of the owner or operator of the boat.

Acts 1971, 62nd Leg., p. 450, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.251. PEACE OFFICERS. The district may employ and constitute its own peace officers. The peace officers may make arrests when necessary to prevent or abate the commission of an offense against the regulations of the district or state laws if the offense occurs or is about to occur on land or water owned or controlled by the district. Arrests also may be made any place where an offense is being committed which involves injury or detriment to any property owned or controlled by the district.

Acts 1971, 62nd Leg., p. 450, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.253. INJUNCTION. In addition to the penalties provided by this subchapter, the district may seek an injunction in a court of competent jurisdiction in the county in which district water is located to enforce the provisions of this subchapter and rules and regulations of the district.

Acts 1971, 62nd Leg., p. 451, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER G. DISTRICT SURVEY

Sec. 55.332. DUTIES OF THE ENGINEER. The engineer shall make a complete survey of the land included in the district and make a map and profile of the canals, laterals, reservoirs, dams, and pumping sites located in the district and extending beyond the limits of the district.

Acts 1971, 62nd Leg., p. 453, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.333. MAPS. (a) The map shall show the name and number of each survey and the area in the district in number of acres.

(b) The map shall show the relation that each canal and lateral bears to each tract of land through which it passes and the shapes into which it divides each tract. If the canal or lateral cuts off any less than 20 acres from any tract, the map shall show the number of acres in the whole tract and the shape of the small tract and its relationship to the canal or lateral.

(c) The map shall show how much and what part of each tract can be irrigated by the canal or lateral.

(d) The profile map shall also show in detail the number of cubic yards which need to be excavated or moved to make the reservoir, canal, or lateral, and the specifications for other works necessary to the construction of improvements proposed for the district, and the estimated cost of each.

Acts 1971, 62nd Leg., p. 453, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.334. ADOPTING OLD SURVEYS. (a) The engineer may adopt any surveys made in the past by any person who has applied for or appropriated any water for irrigation under state law.

(b) The engineer also may adopt any surveys for canals, laterals, reservoirs, dams, or pumping sites shown on these maps or plats or may adopt other maps, plats, and surveys which he is satisfied are correct.

Acts 1971, 62nd Leg., p. 454, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.335. ADDITIONAL IMPROVEMENTS. If additional improvements of canals, ditches, laterals, reservoirs, or pumping plants are to be constructed, the report shall contain the detailed information with reference to these additional improvements.

Acts 1971, 62nd Leg., p. 454, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.336. EXISTING IMPROVEMENTS. If the district contains any pumping plants, canals, dams, ditches, or reservoirs which the district is planning to acquire or purchase, the map or plat and the

estimates required in this subchapter shall show these improvements and the price or probable price at which they may be acquired or purchased.

Acts 1971, 62nd Leg., p. 454, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.337. SIGNING AND FILING ENGINEER'S REPORT, MAP, AND PROFILE. After the map, profile, specifications, and estimates are completed, the engineer shall sign them and file them with the secretary of the board.

Acts 1971, 62nd Leg., p. 454, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.338. MAPS AND DATA UNNECESSARY UNDER CONTRACT WITH UNITED STATES. None of the maps and data prescribed by this subchapter are required under a contract with the United States except for maps and data needed to make assessments and levies.

Acts 1971, 62nd Leg., p. 454, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER H. WATER ASSESSMENTS

Sec. 55.351. STATEMENT ESTIMATING WATER REQUIREMENTS AND PAYMENT OF CHARGE. (a) If required by the board, each person desiring to receive irrigation water at any time during the year shall furnish the secretary of the board a written statement of the acreage the person intends to irrigate and the different crops the person intends to plant with the acreage of each crop.

(b) At the time the acreage estimate is furnished to the secretary, each person applying for water shall pay the portion of the water charge or assessment set by the board for immediate payment.

(c) If a person applying for water from the district does not furnish the statement of estimated acreage or does not pay the part of the water charge or assessment set by the board before the date for fixing the assessment, the district is not obligated to furnish water to that person during that year.

Acts 1971, 62nd Leg., p. 455, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 15, eff. September 1, 2013.

Sec. 55.352. BOARD'S ESTIMATE OF MAINTENANCE AND OPERATING EXPENSES. The board, on or as soon as practicable after a date fixed by standing order of the board, shall estimate the expenses of maintaining and operating the district's water delivery system for the next 12 months. The board may change the 12-month period for which it estimates the expenses of maintaining and operating the water delivery system by estimating such expenses for a shorter period so as to adjust to a new fixed date and thereafter estimating the expenses for 12-month periods following the adjusted fixed date.

Acts 1971, 62nd Leg., p. 455, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1997, 75th Leg., ch. 789, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 16, eff. September 1, 2013.

Sec. 55.353. METHODS FOR DETERMINING MAINTENANCE AND OPERATING EXPENSES. The board may make assessments for maintenance and operating expenses as provided in this subchapter on the basis of the quantity of water used.

Acts 1971, 62nd Leg., p. 455, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.354. DISTRIBUTION OF ASSESSMENT. (a) The board by order shall allocate a portion of the estimated maintenance and operating expenses that shall be paid by assessment against all land in the district to which the district can furnish irrigation water through its water delivery system or through an extension of its water delivery system. This assessment shall be levied against all irrigable land in the district on a per acre basis, whether or not the land is actually irrigated.

(b) The board shall determine from year to year the proportionate amount of the expenses which will be borne by all water users receiving water delivery from the district.

(c) The remainder of the estimated expenses shall be paid by assessments, charges, fees, rentals, or deposits required of persons in the district who use or who make application to use water and other charges approved by the board. The board shall prorate the remainder among the applicants for irrigation water and may consider:

(1) the acreage each applicant will plant, the crop the applicant will grow, and the amount of water per acre used for irrigation purposes; and

(2) other factors deemed appropriate by the board with respect to water used for other nonirrigation uses.

(d) All persons using irrigation water to plant the same crop will pay the same price per acre for the water.

(e) A landowner of irrigable land in the district or a user of water delivered by the district for any purpose other than irrigation who disputes all or a part of a board order that determines the amount of an assessment, charge, fee, rental, or deposit may file a petition under Section 11.041. That petition filed with the commission is the sole remedy available to a landowner or user of water described by this subsection.

Acts 1971, 62nd Leg., p. 455, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 17, eff. September 1, 2013.

Sec. 55.355. NOTICE OF ASSESSMENTS. (a) Public notice of all assessments imposed under Section 55.354(a) shall be given by posting printed notice of the assessment in at least one public place in the district.

(b) Not later than the fifth day before the date on which the assessment is due, notice shall be mailed to each landowner at the address which the landowner shall furnish to the board.

(c) Notice of special assessments shall be given within 10 days after the assessment is levied.

Acts 1971, 62nd Leg., p. 455, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 18, eff. September 1, 2013.

Sec. 55.356. PAYMENT OF ASSESSMENTS. (a) All assessments imposed under Section 55.354(a) shall be paid in installments at the times fixed by the board.

(b) If a crop for which water was furnished by the district is harvested before the due date of any installment payment, the entire unpaid assessment becomes due at once and shall be paid within 10 days after the crop is harvested and before the crop is removed from the county or counties in which it was grown.

Acts 1971, 62nd Leg., p. 456, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 19, eff. September 1, 2013.

Sec. 55.357. COLLECTION OF ASSESSMENTS BY TAX ASSESSOR AND COLLECTOR. (a) Under the direction of the board, the assessor and collector of taxes, or other person designated by the board, shall collect all assessments imposed under Section 55.354(a) for maintenance and operating expenses made under the provisions of this subchapter.

(b) The assessor and collector of taxes shall give bond in an amount determined by the board, conditioned upon the faithful performance of the duties of the assessor and collector and accounting for all money collected.

(c) The assessor and collector of taxes shall keep an account of all money collected and shall deposit the money as collected in the district depository. The assessor and collector shall file with the secretary of the board a statement of all money collected once each month.

(d) The assessor and collector shall use duplicate receipt books, give a receipt for each collection made, and retain in the book a copy of each receipt, which shall be kept as a record of the district.

Acts 1971, 62nd Leg., p. 456, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 20, eff. September 1, 2013.

Sec. 55.358. CONTRACTS WITH PERSON USING IRRIGATION WATER. (a) The board may require each person who desires to use irrigation water during the year to enter into a contract with the district which states the acreage to be irrigated, the crops to be planted, the amount to be paid for the water, and the terms of payment.

(b) The contract is not a waiver of the lien given to the district under Section 55.359 against the crops of a person using irrigation water for the service furnished to the person.

(c) If a person irrigates more acreage than the person's contract specifies, the person shall pay for the additional service.

(d) The directors also may require a person using irrigation water to execute a negotiable note or notes for all or part of the amount owed under the contract.

Acts 1971, 62nd Leg., p. 456, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 21, eff. September 1, 2013.

Sec. 55.359. LIEN AGAINST CROPS. (a) The district shall have a first lien, superior to all other liens, against all crops grown on a tract of land in the district to secure the payment of an assessment imposed against the tract under Section 55.354(a), interest, and collection or attorney's fees.

(b) When the district obtains a water supply under contract with the United States, the board may, by resolution entered in their minutes and with the consent of the secretary of the interior, waive the lien in whole or in part.

(c) If the crops against which the district has a lien under this section are cultivated on a basis other than annual replanting, the owner of the crops shall record with the county clerk of the county where the land on which the crops are cultivated is located a legally sufficient description of the land, including a metes and bounds description or a plat reference.

Acts 1971, 62nd Leg., p. 456, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 22, eff. September 1, 2013.

Sec. 55.360. LIST OF DELINQUENT ASSESSMENTS. Assessments imposed under Section 55.354(a) not paid when due shall become delinquent on the first day of the month following the date payment is due, and the board shall keep posted in a public place in the district a correct list of all delinquent assessments. If a person who owes an assessment has executed a note and contract as provided in Section 55.358, the person may not be placed on the delinquent list until after the maturity of the note and contract.

Acts 1971, 62nd Leg., p. 457, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1997, 75th Leg., ch. 789, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 23, eff. September 1, 2013.

Sec. 55.361. WATER SERVICE DISCONTINUED. (a) If a landowner fails or refuses to pay any water assessment or a person fails to pay a charge, fee, rental, or deposit imposed under this chapter or Chapter 49 when due, the landowner's or person's water supply shall be cut off, and no water shall be furnished to the land until all back assessments or other amounts owed to the district are fully paid. The discontinuance of water service is binding on all persons who own or acquire any interest in land for which assessments or other amounts owed to the district are due.

(b) A landowner or person whose water service has been discontinued under Subsection (a) may request that the board reconsider the discontinuance related to a charge, fee, rental, deposit, or penalty, and may not request that the board reconsider a discontinuance related to an assessment. If the board declines to reconsider the discontinuance, the landowner or person may file a petition under Section 11.041. That petition filed with the commission is the sole remedy available to a landowner or person described by this subsection.

Acts 1971, 62nd Leg., p. 457, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 24, eff. September 1, 2013.

Sec. 55.362. SUITS FOR DELINQUENT ASSESSMENTS. Suits for delinquent water assessments or other amounts owed to the district under this subchapter may be brought either in the county in which the irrigation district is located or in the county in which the defendant resides. All landowners are personally liable for all assessments imposed under Section 55.354(a).

Acts 1971, 62nd Leg., p. 457, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 25, eff. September 1, 2013.

Sec. 55.363. INTEREST AND COLLECTION FEES. (a) All assessments imposed under Section 55.354(a) shall bear interest from the date payment is due at the rate of 15 percent a year. Assessments not paid by the first day of the month following the date payment is due are delinquent, and a penalty of up to 15 percent of the amount of the past-due assessment shall be added to the amount due.

(b) If suit is filed to foreclose a lien on crops or if a delinquent assessment is collected by an attorney before or after suit, an additional amount of 15 percent on the unpaid assessment, penalty, and interest shall be added as collection or attorney's fees.

Acts 1971, 62nd Leg., p. 457, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1997, 75th Leg., ch. 789, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 26, eff. September 1, 2013.

Sec. 55.364. RIGHTS OF THE UNITED STATES. If the board enters into a contract with the United States, the remedies in this subchapter available to the district also shall apply to enforce payment of charges due to the United States. The Reclamation Extension Act, approved August 13, 1914, and as amended, and all other federal reclamation laws apply. The directors shall distribute and apportion all water acquired by the district under a contract with the United States in accordance with acts of Congress, rules and

regulations of the secretary of the interior, and provisions of the contract.

Acts 1971, 62nd Leg., p. 457, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.365. SURPLUS ASSESSMENTS. If assessments made under this subchapter are more than sufficient to pay the necessary expenses of the district, the balance shall be carried over to the next year.

Acts 1971, 62nd Leg., p. 458, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.366. INSUFFICIENT ASSESSMENTS. If the assessments made under this subchapter are not sufficient to pay the necessary expenses of the district, the unpaid balance shall be assessed, pro rata, in accordance with the assessments made for the current year. The additional assessments shall be paid under the same conditions and penalties within 30 days from the date of assessment.

Acts 1971, 62nd Leg., p. 458, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.367. LAND NOT SUBJECT TO ASSESSMENTS. If a district fails to furnish sufficient water to irrigate land in the district for two years after its organization, the nonirrigated land is relieved of all assessments and charges except taxes until the district constructs the necessary canals and furnishes the necessary water to irrigate the land.

Acts 1971, 62nd Leg., p. 458, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.368. LOANS FOR MAINTENANCE AND OPERATING EXPENSES. The board may borrow money to pay maintenance and operating expenses at an interest rate of not more than 10 percent a year and may pledge as security any of its notes or contracts with water users or accounts against them.

Acts 1971, 62nd Leg., p. 458, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.369. FIXED CHARGES FOR MAINTENANCE EXPENSES. If maintenance charges are based on the quantity of water used, a fixed charge may be made on all land or water connections entitled to receive and use water. An additional charge may be made, or a graduated scale adopted, for the use of more water than that covered by the minimum charge. The board may install proper measuring devices.

Acts 1971, 62nd Leg., p. 458, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.370. CHARGE TO CITIES AND TOWNS. If a district includes a city or town or contracts with a city or town to supply water to it, the charge for the use of water and the time and manner of payment shall be determined by a standing order of the board.

Acts 1971, 62nd Leg., p. 458, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.371. AUTHORITY TO DETERMINE RULES AND REGULATIONS. The directors may adopt, alter, and rescind rules, regulations, and standing and temporary orders which do not conflict with the provisions of this chapter and which govern:

(1) methods, terms and conditions of water service;

(2) applications for water;

(3) assessments for maintenance and operation;

(4) payment and the enforcement of payment of the assessments;

(5) furnishing of water to persons who did not apply for it before the date of assessment; and

(6) furnishing of water to persons who wish to take water for irrigation in excess of their original applications or for use on land not covered by their original applications.

Acts 1971, 62nd Leg., p. 458, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER I. SUPPLYING WATER TO MILITARY CAMPS

Sec. 55.401. AUTHORITY OF DISTRICTS WITH MILITARY BASE TO ISSUE

BONDS. Any district operating under Article XVI, Section 59, of the Texas Constitution, which contains all or part of a United States military camp or base may issue negotiable revenue bonds to provide funds for acquiring or constructing filtration and pumping equipment, pipelines, and other facilities for supplying water to military camps or bases.

Acts 1971, 62nd Leg., p. 459, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.402. BOND ELECTION. The district may issue negotiable revenue bonds with a total par value of not more than $100,000 without the necessity of holding an election, but it may not issue bonds with a total par value of more than $100,000 unless the bond issue is approved at an election held under the law governing bond elections.

Acts 1971, 62nd Leg., p. 459, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.403. INTEREST RATE AND MATURITY DATE. Bonds issued under this subchapter shall mature not more than five years after the date of issuance.

Acts 1971, 62nd Leg., p. 459, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.404. SECURITY FOR BONDS. (a) Bonds issued under this subchapter may be secured by all or part of the net revenue to be received from a contract for the sale of water by the district to the United States for use at military camps or bases and from all renewals, extensions, or substitutions of the contract.

(b) In addition, the bonds may be secured by a deed of trust lien on the equipment, facilities, and property acquired or constructed with the funds from the sale of the bonds.

Acts 1971, 62nd Leg., p. 459, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.405. APPROVAL; REGISTRATION. After bonds are authorized under this subchapter but before they are issued, the

bonds, the resolution of the board authorizing the bonds to be issued, and other certificates and records relating to the issuance of the bonds shall be submitted to the Attorney General of Texas for his examination. The attorney general shall approve the bonds if they are issued in accordance with the provisions of this subchapter and the constitution, and the bonds shall be registered with the comptroller.

Acts 1971, 62nd Leg., p. 459, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.406. VALIDITY OF BONDS. After bonds are approved by the attorney general and registered with the comptroller, they shall be held valid and binding in any action, suit, or proceeding in which their validity is questioned. In any action brought to enforce collection of the bonds, the certificate of approval by the attorney general, or a certified copy of the certificate, shall be admitted as evidence of the validity of the bonds. The only defense which can be offered against the validity of the bonds is forgery or fraud.

Acts 1971, 62nd Leg., p. 459, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.407. PAYMENT OF BONDS. The holder of bonds issued under the provisions of this subchapter is not entitled to payment of the bonds from funds derived from taxes levied on property in the district.

Acts 1971, 62nd Leg., p. 460, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.408. ADVERTISING FOR BIDS. A contract for constructing or acquiring filtration and pumping equipment, pipelines, or other facilities to supply water to military camps or bases may be awarded only after advertising for bids for a period of time to be determined by the board. The advertisement for bids shall be published in a newspaper of general circulation in the district at least one time not less than 10 days before awarding the contract.

Acts 1971, 62nd Leg., p. 460, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER J. GENERAL FISCAL PROVISIONS

Sec. 55.421. CONSTRUCTION AND MAINTENANCE FUND. The expenses, debts, and obligations incurred in creating, establishing, and maintaining the district shall be paid from the construction and maintenance fund. The construction and maintenance fund shall consist of money received by the district from the sale of bonds or from other sources provided by this chapter.

Acts 1971, 62nd Leg., p. 460, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.422. MAINTENANCE AND OPERATING FUND. (a) The district shall create a maintenance and operating fund which shall consist of any money collected by assessment or other methods for the maintenance and operation of property owned by the district and for temporary rent owed to the United States.

(b) The district shall pay all operating expenses and any balance due on construction work, extensions, and improvements from the maintenance and operating fund with warrants executed in the manner provided in this chapter.

(c) If the district intends to enter into a contract with the United States for the construction of the irrigation system, the expenses, debts, and obligations may be paid from the maintenance and operating fund.

Acts 1971, 62nd Leg., p. 460, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER K. BORROWING MONEY

Sec. 55.452. ADOPTING METHOD FOR PAYMENT OF DEBTS. (a) When a district incurs a debt or obligation, it shall provide for payment of the debt or obligation by levying, assessing, and collecting either a general ad valorem tax or a tax on a benefit basis.

(b) Any district which has previously issued bonds or obligations payable on either basis may adopt a different basis of taxation in the creation of an additional debt or obligation.

(c) Each debt or obligation shall be paid in the manner provided at the time it was incurred.

Acts 1971, 62nd Leg., p. 462, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.454. INCURRING DEBT WITHOUT VOTER APPROVAL. None of the provisions of this subchapter shall prevent the board from creating any debt or obligation without voter approval if the debt or obligation is created to defray ordinary maintenance and operating expenses or if the debt or obligation is to be retired from current revenues.

Acts 1971, 62nd Leg., p. 463, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.455. TAXES ON UNIFORM BASIS. (a) Any district which has the principal function of furnishing water for irrigation in the district may provide for the payment of principal and interest on any debts or obligations by levying taxes on land in the district on an equal or uniform basis with an equal charge per acre on each acre of land to be irrigated.

(b) The tax collector shall prepare a special tax roll showing each tract of land in the district, the number of acres in each tract, the total assessment of benefits on each tract, and the amount to be paid each year on each tract, and the roll shall be prepared or amended annually.

(c) The tax roll shall be examined, corrected, and approved by the board.

(d) The tax roll shall be prepared at the time and in the manner provided in the Property Tax Code. The valuation fixed on property shall be the assessment charge against each acre of land at the time the debt or obligation is incurred.

Acts 1971, 62nd Leg., p. 463, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 55.456. OBTAINING LOAN WHEN BONDS CANNOT BE SOLD. If the district has any bonds which were issued under the provisions of this code but which cannot, in the opinion of the board, be sold on terms which are advantageous to the district, the district may obtain a loan in an amount of not more than the amount of the unsold bonds. The money may be used for any of the purposes for which the bonds were issued, and the bonds may be pledged as a guarantee or assurance that the loan will be paid. The amount of bonds pledged may not

exceed the amount of the loan by more than 15 percent.

Acts 1971, 62nd Leg., p. 463, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.457. USING REVENUE FROM SALE OF WATER, POWER, AND OTHER SERVICES TO PAY DEBTS. (a) The district may fix charges for the use and sale of water, power, and other services to pay debts and to accomplish other lawful purposes of the district.

(b) The district may borrow money for any purpose in the manner provided in this subchapter and pledge for payment of these debts, income and revenue from the sale of water, power, and other services sufficient in amount to pay principal, interest, and other charges which may accrue.

Acts 1971, 62nd Leg., p. 463, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.458. LOAN FUND. (a) The board may pay or contract to pay on any bonds which it has sold or pledged, in addition to taxes, other funds derived from:

(1) water charges for use of water in the district;

(2) sale or supply of water to any city, town, municipal corporation, district, or land or user of water outside the boundaries of the district;

(3) sale of water to any commercial or industrial enterprise;

(4) sale of hydroelectric power; or

(5) any or all of these sources of revenue.

(b) The board shall fix the amount to be derived from these sources for this purpose and shall enforce and collect it in the same manner provided to collect charges or assessments for maintenance and operation. All liens and remedies provided by law to secure and enforce the collection of charges and assessments for maintenance and operation of the district are applicable to securing and enforcing the collection of these funds.

(c) Money collected under this section shall be kept in a separate fund called the "loan fund" and shall be used only for the purpose of paying the principal and interest on the bonds for as long as the bonds remain unpaid.

(d) The charge created by this section is an additional and

distinct charge and a source of income of the district over and above its income for maintenance and operation and other purposes.

(e) After the loan fund is created and pledged, the action of the board in fixing the amount of the charge and in fixing the total annual charges for maintenance and operation may not be reviewed by the commission regardless of any law to the contrary.

Acts 1971, 62nd Leg., p. 464, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 982, ch. 367, Sec. 26, eff. June 10, 1981.

SUBCHAPTER L. ISSUANCE OF BONDS

Sec. 55.491. BOND ELECTION. After the district is created, the members of the board are qualified, the maps, profiles, specifications, and estimate are filed, and after the assessor and collector has made and returned the assessment roll, the board may order a bond election to be held in the district at the earliest possible legal time.

Acts 1971, 62nd Leg., p. 464, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.497. NECESSARY VOTE. (a) In a district operating under the authority of Article III, Section 52, of the Texas Constitution, a two-thirds vote of persons voting in the election is required to adopt a proposition to issue bonds or to enter into a contract with the United States.

(b) In a district operating under the authority of Article XVI, Section 59, of the Texas Constitution, a majority vote of persons voting in the election is required to adopt a proposition to issue bonds or to enter into a contract with the United States.

Acts 1971, 62nd Leg., p. 465, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.498. ORDERING ISSUANCE OF BONDS. After the vote is canvassed and a favorable result is declared, the board shall make and enter an order authorizing the issuance of bonds or the execution of a contract with the United States.

Acts 1971, 62nd Leg., p. 466, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.499. AMOUNT OF BONDS. The bonds shall be sufficient in amount to pay for the proposed improvements together with necessary incidental expenses connected with the improvements, but the amount shall not be more than the amount specified in the order and notice of election. The total amount of the bonds shall include:

(1) the amount of the engineer's estimate;

(2) incidental expenses;

(3) organization expenses; and

(4) cost of additional work caused by any change or modification made by the directors.

Acts 1971, 62nd Leg., p. 466, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.500. LIMITATION OF INDEBTEDNESS. In districts organized under Article III, Section 52, of the Texas Constitution, the amount of bonds or the amount of the contract indebtedness with the United States may not be more than one-fourth of the actual assessed value of the real property in the district as shown by an assessment made for this purpose or by the last annual assessment made under this chapter. This limitation does not apply to districts operating under the authority of Article XVI, Section 59, of the Texas Constitution.

Acts 1971, 62nd Leg., p. 466, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.501. SPECIAL INTEREST PROCEDURE. (a) The maximum amount of bonds issued by a district may include a sufficient sum to pay the first one, two, or three years' interest to accrue on the bonds, and no taxes shall be levied against property located in the district for this period except for a sufficient tax to pay notes provided for in Section 55.038 of this code.

(b) The board may designate the period of interest to begin either with the date of the bonds fixed in the order which authorizes their issuance or from the date or dates of the actual sale, issuance, and delivery of the bonds or any installments.

(c) Any money left in the interest fund at the end of the

designated period still may be used to pay interest on the bonds.

Acts 1971, 62nd Leg., p. 466, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.502. FORMAL REQUIREMENTS OF BONDS. (a) The board shall issue bonds in the name of the district, and the president shall sign the bonds, the secretary shall attest to them, and the district's seal shall be impressed on them.

(b) The bonds shall be issued in denominations of not less than $100 nor more than $1,000 each.

(c) The bonds shall be payable annually or semiannually and shall mature not more than 40 years after they are issued.

(d) The bonds may be issued to mature in serial form at any date which does not come later than the date specified in the notice of election and may bear any rate of interest which is not more than the rate of interest specified in the notice.

(e) The terms of the bonds shall include the time, place, manner, and conditions of payment and the interest rate which are ordered by the board.

Acts 1971, 62nd Leg., p. 466, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.504. SUIT TO DETERMINE VALIDITY OF BONDS OR CONTRACT. (a) Before any bonds are offered for sale, the district shall bring suit in any district court within the judicial district in which the district is located or in any district court in Travis County to determine the validity of the bonds. On request of the secretary of interior, any district entering into a contract with the United States shall bring suit in one of the same courts to determine the validity of the contract.

(b) The action shall be in the nature of a proceeding in rem, and jurisdiction over all interested parties may be obtained by publishing notice once a week for at least two consecutive weeks in a newspaper with general circulation in the county in which the district is located. If there is no newspaper published in the county, the notice shall be published in the county nearest to the district in which a newspaper is published.

Acts 1971, 62nd Leg., p. 467, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.505. NOTICE TO ATTORNEY GENERAL. (a) Notice of a validation suit shall be served on the attorney general in the manner provided for serving a notice in civil suits.

(b) The attorney general may waive service if he is furnished a full transcript of the proceedings held in the formation of the district and held in connection with the issuance of the bonds or the authorization of the contract with the United States and is furnished a copy of the contract.

Acts 1971, 62nd Leg., p. 467, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.507. RIGHT OF PERSONS TO INTERVENE AND PARTICIPATE IN SUIT. At the trial of a validation suit the court may permit persons having an interest in the issues to be determined to intervene and participate in the trial of the issues.

Acts 1971, 62nd Leg., p. 468, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.509. JUDGMENT RENDERED. (a) If the judgment of the court in a validation suit is against the district, the district may accept the judgment and may correct the error pointed out in the proceedings in the manner directed by the court.

(b) After the corrections are made, the judgment of the court shall be rendered showing that the corrections have been made and that the bonds or the contract is a binding obligation on the district.

(c) The final judgment, when it is entered, is res judicata in any case arising in connection with the bonds or their interest or in connection with the collection of money required under the contract with the United States and in all matters relating to the validity of the organization of the district, the district's bonds, or the contract with the United States.

Acts 1971, 62nd Leg., p. 468, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.510. COURT'S DECREE. (a) After the district court

enters a final judgment in a validation suit, the clerk of the court shall make a certified copy of the decree which shall be a part of the orders and decree connected with the election.

(b) The court's decree shall be filed with the comptroller and he shall record the decree in a book kept for that purpose.

(c) The certified copy of the decree or a certified copy of the record made by the comptroller shall be received as evidence in any litigation which may affect the validity of the bonds or contract with the United States and shall be conclusive evidence of the validity.

Acts 1971, 62nd Leg., p. 468, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.513. COUNTY CLERK'S FEES. The county clerk is entitled to receive:

(1) for registering the bonds, 10 cents for each bond which is registered;

(2) for entering the payment of a bond, 10 cents; and

(3) for recording district instruments required to be recorded and for which no fee is provided, the same fees provided by law for recording deeds.

Acts 1971, 62nd Leg., p. 469, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.514. SALE OF BONDS. (a) After the bonds are issued and registered by the comptroller, the board shall offer the bonds for sale and shall sell them on the best terms and for the best possible price.

(b) After all the bonds are sold, the board shall pay to the district depository all money received from the sale.

(c) The board may exchange the bonds for property to be acquired by purchase under contract or in payment of the contract price for work to be done for the use and benefit of the district.

Acts 1971, 62nd Leg., p. 469, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.515. EMERGENCY LOANS AND INTERIM BONDS. (a) The district may create emergency loans and issue interim bonds for the

purposes, in the manner, and under the restrictions and limitations provided in Sections 51.444-51.449 of this code.

(b) It is the purpose of this section to confer on the district the same power and authority with respect to emergency loans and issuance of interim bonds as that conferred by law on water control and improvement districts.

Acts 1971, 62nd Leg., p. 469, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.516. TAX LEVY. (a) After bonds have been voted, the board shall levy a tax on all property in the district sufficient to pay the interest on the bonds together with an additional amount to be placed in the sinking fund to discharge and redeem the bonds at maturity, and the board shall annually levy or have assessed and collected taxes on all property in the district sufficient to pay for the expenses for assessing and collecting the taxes.

(b) The board may issue the bonds in serial form or to be paid in installments.

(c) The tax levy shall be sufficient to pay the interest on the bonds, to meet the proportional amount of the principal of the next maturing series of the bonds, and to pay expenses of assessing and collecting the taxes for the year.

(d) If a contract is entered into with the United States, the board shall levy a tax sufficient to meet all installments as they are due and to pay interest. The directors shall make an annual levy until the contracts and obligations are discharged.

Acts 1971, 62nd Leg., p. 469, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.517. ADJUSTMENT OF TAX LEVY. The tax which is levied in connection with the original bond issue shall remain in force for that purpose until a new levy is made. The board may, from time to time, increase or diminish the tax for the purpose of adjusting the tax to the taxable values of taxable property in the district and the amount to be collected, and the increase or decrease in the tax shall be sufficient to provide enough money in the interest and sinking fund to make annual payments on outstanding bonds.

Acts 1971, 62nd Leg., p. 470, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.518. INTEREST AND SINKING FUND. (a) The district shall have an interest and sinking fund which shall consist of all taxes collected under the provisions of this chapter for this fund.

(b) Money in the interest and sinking fund shall be paid out only:

(1) to satisfy and discharge interest on the bonds;

(2) to pay the bonds;

(3) to defray the expense of assessing and collecting the tax; and

(4) to pay principal and interest due to the United States under a contract with the district under which bonds have not been deposited with the United States.

(c) The board shall order money from the fund to be paid out by warrants drawn as provided in this chapter. When funds are paid out, the depository shall receive and cancel the interest coupon or bond paid, and the interest coupon or bond shall be delivered to the board to be cancelled and destroyed.

Acts 1971, 62nd Leg., p. 470, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.519. INVESTMENT OF SINKING FUNDS. The board may invest sinking funds of the district in bonds of the United States, the State of Texas, any county, any incorporated city or town, any independent school district, or any school district authorized to issue bonds, or they may invest the funds in irrigation or water improvement bonds. The board may not purchase any bonds which under their terms would mature subsequent to the maturity date of bonds for which the sinking fund was created.

Acts 1971, 62nd Leg., p. 470, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.520. REFUNDING BONDS. (a) The board of a district which has issued bonds under the provisions of this chapter, by resolution, may issue refunding bonds to replace the original bonds. The refunding bonds may be issued in any amount, in any denomination, and for any period of maturity and may bear any rate of interest provided in the board's resolution.

(b) The refunding bonds shall be issued subject to the limitations provided in this subchapter for the issuance of bonds.

(c) The refunding bonds may be exchanged for the original bonds at the original bonds' face value or at a discount, or the refunding bonds may be sold and the net proceeds applied to the purchase of the original bonds at face value or at a discount.

Acts 1971, 62nd Leg., p. 470, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.521. REGISTERING REFUNDING BONDS. (a) The comptroller may not register any refunding bonds until the original bonds for which the refunding bonds are issued are presented to him for cancellation or until a contract for the purchase of a corresponding number of the original bonds has been entered into and filed with the comptroller.

(b) After the refunding bonds are registered, the comptroller shall keep them in his possession until the original bonds are surrendered to him and cancelled by him, at which time he shall deliver the new bonds to the proper party or parties.

(c) The original bonds may be presented for payment in installments and an equal amount of refunding bonds registered and delivered as provided in this subchapter.

Acts 1971, 62nd Leg., p. 471, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.522. ISSUING REFUNDING BONDS FOR THE SAME AMOUNT AND WITH THE SAME MATURITY DATE AS THE ORIGINAL BONDS. (a) Refunding bonds for the same amount and with the same maturity date as the bonds which they are to replace may be authorized by resolution of the board and issued without an election to approve them.

(b) These refunding bonds shall be registered by the comptroller in the manner provided in Section 55.521 of this code after a copy of the resolution providing for the issuance of the refunding bonds and the cancellation of the original bonds is filed with the comptroller.

(c) After the original bonds are cancelled and the refunding bonds are registered by the comptroller, the refunding bonds are valid and binding obligations of the district without further proceedings and have the same force, validity, and effect as the

original bonds which they have replaced.

Acts 1971, 62nd Leg., p. 471, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.523. ISSUING REFUNDING BONDS WHICH PLACE A GREATER BURDEN ON THE DISTRICT. If the district issues refunding bonds for a greater amount, for a greater rate of interest, or for a longer period of maturity than the bonds which they are to replace or if the refunding bonds in any other respect create a greater burden on the district, the district shall submit the question of whether or not it should issue the refunding bonds to the voters of the district.

Acts 1971, 62nd Leg., p. 471, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.524. LAW GOVERNING REFUNDING BONDS. (a) The provisions of this subchapter governing the election and the issuance, approval, validation, registration, and sale of bonds shall apply to refunding bonds.

(b) Refunding bonds shall be registered and delivered in the manner provided in Section 55.521 of this code.

Acts 1971, 62nd Leg., p. 471, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.525. LIMITING DISTRICT'S POWER TO INCUR DEBT. (a) The board of any district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, may limit the power of the district to incur debt and issue bonds in the manner provided by this subchapter.

(b) The board may adopt a resolution declaring that for a period of not more than 10 years the district may not issue bonds in excess of 25 percent of the assessed value of taxable property of the district according to the last assessment for district purposes.

Acts 1971, 62nd Leg., p. 472, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.526. NOTICE OF LIMITATION OF DEBT. Once a week for two consecutive weeks in a newspaper published in the district, the board

shall publish notice of the adoption of a resolution to limit the district's power to incur debt. The notice shall state that the resolution will take effect unless a petition against the proposed limitation signed by 10 percent of the qualified property taxpaying electors of the district is presented within 30 days after the first publication of notice.

Acts 1971, 62nd Leg., p. 472, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.527. LIMITATION ELECTION. (a) If a petition is filed under Section 55.526 of this code, the limitation of the power to incur debt will not take effect unless it is approved at a general or special election held in the district. The election will be held in the manner provided for holding other general and special elections in the district.

(b) The ballots for the election shall be printed to provide for voting for or against the following proposition: "Limiting during the term of _____ years, the maximum debt of the district to 25 percent of the assessed value of the real property."

Acts 1971, 62nd Leg., p. 472, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.528. OPERATING UNDER A LIMITATION ON POWER TO INCUR DEBT. (a) If no petition is presented under Section 55.526 of this code or if the limitation on the power to incur debt is approved at the election, the district, during the limitation period, may not issue bonds under any statute or the constitution in excess of the limited amount except to complete construction work for which bonds may be issued within the limitation.

(b) The board shall issue bonds in excess of the limitation to complete these works only after the commission has approved the plans and specifications of the original and uncompleted works together with the estimates of their cost.

Acts 1971, 62nd Leg., p. 472, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 982, ch. 367, Sec. 27, eff. June 10, 1981.

Sec. 55.529. ISSUING BONDS IN EXCESS OF DEBT LIMITATION. (a) If the plans, specifications, and estimates under Section 55.528 of this code are approved by the commission, the district shall publish notice once a week for three weeks that it intends to issue bonds in excess of the debt limitation to complete the works. The notice shall include the amount of the proposed bond issue and the time when a hearing will be held.

(b) The hearing to issue the additional bonds shall be held not less than 30 days from the date of the first publication of notice, and any property taxpayer, bondholder or other creditor, or interested person may appear and be heard.

(c) If the determination after the hearing is to issue the bonds in the amount stated in the notice, the question of whether or not the bonds should be issued shall be submitted to the voters of the district at an election held in the manner provided by law.

Acts 1971, 62nd Leg., p. 472, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 982, ch. 367, Sec. 28, eff. June 10, 1981.

Sec. 55.530. ADDITIONAL PROJECTS FOR THE DISTRICT. (a) After district bonds have been authorized or issued or after a contract with the United States has been authorized or executed, if the board thinks it is necessary, it may authorize:

(1) modifications in the district and its improvements;

(2) purchase or construction of additional improvements and issuance of additional bonds based on the engineer's report; or

(3) a supplemental contract with the United States.

(b) Before any of the projects under Subsection (a) of this section are undertaken, the board shall enter its findings in the minutes and shall give notice that an election will be held to approve the issuance of bonds or the execution of a contract with the United States. The election shall be held within the time and the returns made and the result determined in the same manner provided for the original bond election.

Acts 1971, 62nd Leg., p. 473, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.531. ISSUANCE OF ADDITIONAL BONDS. (a) If an election

held under Section 55.530 of this code favors the issuance of additional bonds or execution of a contract with the United States, the board may issue the bonds or negotiate and execute a supplemental contract with the United States in the manner provided in this chapter.

(b) If a contract is made with the United States under Section 55.185 of this code and bonds are not deposited with the United States, the district is not required to issue bonds, and if the district is required to raise funds in addition to the amount of the contract, the district shall issue the bonds only for the additional amount which is needed.

Acts 1971, 62nd Leg., p. 473, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.532. FUNDS TO REPAIR DAMAGED IMPROVEMENTS. (a) If improvements of the district are damaged, the district may issue bonds or notes to secure funds to repair the damage.

(b) The district's notes may not be for a term of more than 20 years. The board may issue the notes in serial form to mature in installments.

(c) Before the notes are issued, the board shall order an election to be held to approve the issuance of the notes and shall give notice of the election in the manner provided for bond elections. The notice shall include the purpose for which the notes are being issued, the rate of interest, the term of the notes, and the time and place of the election.

(d) The ballots for the election shall be printed to provide for voting for or against the following proposition: "Issuance of notes."

(e) The election shall be held and returns made and canvassed in the manner provided for bond elections.

(f) If two-thirds of the persons voting in the election vote in favor of issuing the bonds, the board may issue and sell the bonds for the benefit of the district.

(g) When the notes are issued or sold, the board shall levy a tax to pay interest on the bonds and to create a sinking fund sufficient to pay the interest and the notes before they mature.

Acts 1971, 62nd Leg., p. 473, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.533. PREFERRED LIEN IN FAVOR OF THE UNITED STATES. A lien for the payments due the United States under a contract between the district and the United States under which bonds have not been deposited with the United States shall be a preferred lien to that of any issue of bonds or any series of any issue of bonds subsequent to the date of the contract.

Acts 1971, 62nd Leg., p. 474, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.534. DEFAULT IN PAYING PRINCIPAL AND INTEREST ON BONDS BY A DISTRICT OBTAINING ITS WATER SUPPLY FROM THE UNITED STATES. (a) If a district which obtains its water supply from the United States defaults in the payment of principal and interest on bonds issued by the district, the board, if it considers it advisable, may authorize the issuance of bonds to fund or refund the debt including bonds, debt and accrued interest on debt, and interest on notes lawfully issued to pay for construction or acquisition of irrigation and drainage works.

(b) Before any bonds are issued under this section, the district shall submit to the voters of the district the question of whether or not the bonds should be issued.

(c) The board may issue the bonds either in serial form or in a form which provides for annual payment of principal and interest in a single amount, represented by coupons, and the board may prescribe the form and contents of the bonds and coupons. Amortization of both principal and interest on the bonds shall be accomplished in not more than 40 years from the date the bonds are issued.

(d) If bonds are issued in serial form, they shall be numbered consecutively beginning with one and continuing in numerical order. The bonds shall mature serially in annual amounts which are approximately equal. The board may set the bonds to not less than 5 years nor more than 40 years.

(e) If the bonds provide for the annual payment of principal and interest in a single amount which is represented by coupons, the coupons for the first five years may be for any amount which in the judgment of the board is economically sound and within the ability of the district to pay. For the remainder of the term of the bonds, the coupons shall be paid annually in equal amounts which are sufficient to liquidate the remainder of the bonds within 40 years from the date

the bonds were issued.

(f) Any funding or refunding bonds issued under this section shall be negotiable.

(g) The district is not bound by the provisions of Sections 55.504-55.505 of this code, and the exercise of the provisions of those sections is left to the discretion of the board. If a suit is instituted, the suit is subject to the provisions and governed by the statutes relating to these suits.

(h) Except as otherwise provided in this section, the laws governing the issuance of bonds and the form and contents of bonds shall apply to bonds issued under this section.

Acts 1971, 62nd Leg., p. 474, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER M. AD VALOREM TAXATION

Sec. 55.581. ASSESSMENT AND COLLECTION OF DISTRICT TAXES. The assessor and collector shall assess and collect taxes for the district.

Acts 1971, 62nd Leg., p. 475, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 55.600. TAX OFFICE. For the convenience of district taxpayers, the assessor and collector shall maintain an office with the board. The office shall serve as a place where taxes may be paid.

Acts 1971, 62nd Leg., p. 478, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.601. ADDITIONAL DUTIES OF THE ASSESSOR AND COLLECTOR. The board may prescribe other duties for the assessor and collector which duties shall be performed in the manner prescribed in the board's rules and regulations.

Acts 1971, 62nd Leg., p. 479, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.604. ASSESSMENT LIENS. Assessments made by the board for maintenance and operation of the district are liens against the land on which the assessments were made and remain liens on the land until the assessments are paid. No law which provides for a period of limitation against actions for debt shall apply under this section, and these debts cannot be barred by limitation.

Acts 1971, 62nd Leg., p. 479, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.620. GENERAL POWERS AND REGULATIONS. (a) No district may become a party to, purchase, hold under, assign, seek to enforce, or receive benefits from a contract between a landowner and a private canal company which was entered into before the district was created. Rights and privileges owned or possessed by the district are those arising or inherent in the district under this chapter.

(b) The district may not:

(1) acquire or enforce any lien against the land which was fixed by a contract entered into before the district was created;

(2) prosecute or have prosecuted any suit to recover water taxes or assessments which accrued before the district was created;

(3) foreclose any lien on land for unpaid water taxes or assessments which accrued before the district was created;

(4) avail itself of any rights under a private contract relating to the land which contract was entered into before the district was created; and

(5) be held liable for the private contract.

(c) The two-year statute of limitation and the provisions of this section may be pleaded as a bar to an action to recover water rents or other assessments which accrued on land in the district before the district was created.

Acts 1971, 62nd Leg., p. 482, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER N. TAXATION ON A BENEFIT BASIS

Sec. 55.651. ELECTION TO DETERMINE METHOD OF TAXATION. (a) A district which operates under the provisions of Article XVI, Section 59, of the Texas Constitution, may, at the time the district is created or before bonds are issued, submit to the voters of the district the question of whether the district will levy, assess, and

collect taxes on the ad valorem basis or on the benefit basis.

(b) The question shall be presented to the voters at the time and in the manner provided by the board.

(c) The ballots for the election shall be printed to provide for voting for or against the following proposition: "The levy of taxes on the benefit basis instead of the ad valorem basis."

(d) The election shall be governed by the provisions of this chapter.

(e) If a majority of the persons voting in the election favor the proposition, the district shall levy, assess, and collect its taxes on the benefit basis.

Acts 1971, 62nd Leg., p. 484, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.652. ASSESSMENT RECORD. When necessary, the board shall apportion and assess the benefits conferred on property in the district and shall make a record showing the amount and value of benefits to accrue on property in the district and the amount of taxes to be levied and collected on the property. No taxes assessed or adjudged against the property may be more than the benefit which accrues to the property from the organization, operation, and maintenance of the district and its improvements.

Acts 1971, 62nd Leg., p. 484, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.653. NOTICE OF TAXES. After the board makes the record specified in Section 55.652 of this code, the board shall mail to each property owner whose name appears in the record, notice of the amount of taxes levied on his property and the date and place at which the property owner may appear and contest the correctness and equitableness of the tax.

Acts 1971, 62nd Leg., p. 484, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.654. DECISION AFTER HEARING. After the hearing, the board shall determine whether or not the tax is equitable and shall sustain, reduce, or increase the tax to an amount which in the board's judgment is equitable.

Acts 1971, 62nd Leg., p. 484, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.655. APPLICABLE LAW. The provisions of this chapter relating to levy, assessment, and collection of taxes which are not inconsistent with the provisions of this subchapter shall apply.

Acts 1971, 62nd Leg., p. 484, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.656. DISTRICTS ADOPTING BENEFIT PLAN OF TAXATION. In any district other than a district operating under a contract with the United States which is operating under the provisions of Article XVI, Section 59, of the Texas Constitution, and which adopted the assessment of benefit plan of taxation, tax values shall be fixed, levied, assessed, equalized, and collected in the manner provided in Sections 55.657-55.669 of this code.

Acts 1971, 62nd Leg., p. 484, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.657. COMMISSIONERS OF APPRAISEMENT. As soon as practicable after the approval of the engineer's report and the adoption of the plan for improvements to be constructed, the board shall appoint three disinterested commissioners of appraisement. The commissioners shall be freeholders but not owners of land within the district which they represent.

Acts 1971, 62nd Leg., p. 485, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.658. COMPENSATION OF COMMISSIONERS. On approval by the board, each commissioner is entitled to receive $10 a day for each day he actually serves, plus all necessary expenses.

Acts 1971, 62nd Leg., p. 485, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.659. NOTICE OF APPOINTMENT AND MEETING. Immediately after the commissioners of appraisement are appointed, the secretary of the board shall give written notice to each appointee of his

appointment and of the time and place of the first meeting of the commissioners.

Acts 1971, 62nd Leg., p. 485, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.660. FIRST MEETING OF COMMISSIONERS. (a) The commissioners shall meet at the time specified in the notice from the secretary or as soon thereafter as possible.

(b) At the meeting the commissioners shall take an oath to faithfully and impartially discharge their duties as commissioners and make a true report of the work which they perform. They shall then organize by electing one commissioner as chairman and one commissioner as vice-chairman.

(c) The secretary of the board or, in his absence, a person appointed by the board shall serve as secretary to the commissioners of appraisement and shall furnish to the commissioners any information and assistance which is necessary for the commissioners to perform their duties.

Acts 1971, 62nd Leg., p. 485, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.661. ASSISTANCE FOR COMMISSIONERS. Within 30 days after the commissioners qualify and organize, they shall begin to perform their duties, and in the exercise of their duties, they may obtain legal advice and information relative to their duties from the district's attorney and, if necessary, may require the presence of the district engineer or one of his assistants at any time and for as long as necessary to properly perform their duties.

Acts 1971, 62nd Leg., p. 485, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.662. VIEWING LAND AND OTHER PROPERTY AND IMPROVEMENTS IN DISTRICT. The commissioners shall view the land in the district which will be affected by the district's reclamation plans and the public roads, railroads, rights-of-way, and other property and improvements located in the district and shall assess the amount of the benefits and damages that will accrue to the land, roads, railroads, rights-of-way, or other property or improvements in the

district from the construction of the improvements.

Acts 1971, 62nd Leg., p. 485, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.663. COMMISSIONERS REPORT. (a) The commissioners shall prepare a report and file it with the secretary of the board. The report shall be signed by at least a majority of the commissioners.

(b) The report shall include:

(1) the name of the owner of each tract of land which is subject to assessment;

(2) a description of the property;

(3) the amount of the benefits or damages assessed on each tract of land;

(4) the time and place at which a hearing will be held on the report to hear objections; and

(5) the number of days each commissioner served and the actual expenses incurred during his service as commissioner.

(c) The date set in the report for the hearing may not be earlier than 20 days after the report is filed.

Acts 1971, 62nd Leg., p. 486, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.664. NOTICE OF HEARING. (a) After the commissioners' report is filed, the secretary of the board shall publish notice of the hearing on the report at least once a week for two consecutive weeks in a newspaper published in each county in which part of the district is located. The secretary also shall mail written notice of the hearing to each person whose property will be affected if his address is known.

(b) The notice shall state:

(1) the time and place of the hearing;

(2) that the commissioners' report has been filed;

(3) that interested persons may examine the report and make objections to it; and

(4) that the commissioners will meet at the time and place indicated to hear and act on objections to the report.

(c) On the day of the hearing, the secretary shall file in his office the original notice and his affidavit stating the manner of

publication, the names of persons to whom notice was mailed, and the names of persons to whom notice was not mailed because the secretary by reasonable diligence could not ascertain their addresses. Copies of the notice and affidavit also shall be filed with the commissioners of appraisement and the clerk of the commissioners court.

Acts 1971, 62nd Leg., p. 486, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.665. HEARING. (a) At or before the hearing on the commissioners' report, an owner of land which is affected by the report or the reclamation plans may file exceptions to all or part of the report.

(b) At the hearing, the commissioners shall hear and form opinions on the objections submitted and for the objections which are sustained, the commissioners may make necessary changes and modifications in the report.

Acts 1971, 62nd Leg., p. 486, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.666. WITNESSES AT THE HEARING. At the hearing, interested parties not only may appear in person or by attorney, but are entitled, on demand, to have the chairman of the commissioners issue process for witnesses. The commissioners shall have the same power as a court of record to enforce the attendance of witnesses.

Acts 1971, 62nd Leg., p. 486, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.667. COSTS OF HEARING. The commissioners may adjudge and apportion the cost of the hearing in any manner they consider equitable.

Acts 1971, 62nd Leg., p. 487, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.668. COMMISSIONERS' DECREE. (a) After the commissioners have made a final decision based on the hearing, they shall issue a decree confirming their report insofar as it remains

unchanged, and shall approve and confirm changes in the report.

(b) The final decree and judgment of the commissioners shall be entered in the minutes of the board, and certified copies shall be filed with the county clerk of each county in which part of the district is located and shall be notice to all persons of the contents and purpose of the decree.

(c) The findings of the commissioners which relate to benefits and damages to land and other property in the district are final and conclusive.

Acts 1971, 62nd Leg., p. 487, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 71, eff. Sept. 1, 1989.

Sec. 55.669. EFFECT OF FINAL JUDGMENT AND DECREE. The final judgment and decree of the commissioners shall form the basis for all taxation in the district. Taxes shall be apportioned and levied on each tract of land and other real property in the district in proportion to the net benefits to the land or other property stated in the final judgment and decree.

Acts 1971, 62nd Leg., p. 487, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.670. FIXING TAX AS EQUAL SUM ON EACH ACRE. At the election at which the plan of taxation is determined or at any other time before the bonds are issued, the voters of a district which is not operating under a contract with the United States may vote on the proposition of whether or not benefits for tax purposes shall be fixed as an equal sum on each acre of land that is irrigated or to be irrigated by gravity flow from the canal system of the district. The benefit per acre shall be voted on as it is applied to land in the district that can be irrigated by gravity flow from the irrigation system and also the benefit to land in the district that cannot be irrigated by gravity flow.

Acts 1971, 62nd Leg., p. 487, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.671. ELECTION. (a) If the board desires to submit the

question of whether or not to adopt the method of assessing benefits provided in Section 55.670 of this code, it shall order an election to be held in the district and shall submit the proposition in the manner provided for other district elections.

(b) The ballots for the election shall be printed to provide for voting for or against: "Uniform assessment of benefits of $_____ per acre on all irrigable land in the district, and the assessment of $_____ per acre on all nonirrigable land in the district."

(c) The board shall determine the amounts which shall fill the spaces in the proposition. The amount of charge per acre may be found by dividing the number of acres of land into the amount of debt to be incurred by the district in providing for irrigation.

(d) If a majority of the persons voting in the election vote in favor of the proposition, it shall be adopted.

Acts 1971, 62nd Leg., p. 487, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.672. EXCLUDING NONIRRIGABLE LAND FROM DISTRICT. If the owner of land which is classed as nonirrigable under the uniform acreage valuation objects to the amount of charges fixed against him by the order calling the election or by the result of the election, he may have his nonirrigable land excluded from the district by filing an application for exclusion as provided by law within 10 days after the election is held.

Acts 1971, 62nd Leg., p. 488, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.673. SETTING ANNUAL VALUE OF LAND UNNECESSARY. If the district adopts the uniform acreage valuation for taxation, the valuation shall be applied to all land in the district, and it is not necessary to annually fix the value of the land. It is also unnecessary for the board to appoint a commission to ascertain or fix the value of the improvement to particular land.

Acts 1971, 62nd Leg., p. 488, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 55.674. PREPARING TAX ROLLS. (a) The board shall examine the tax rolls to determine if all property subject to taxation appears on the tax rolls under the proper classification. The board shall add to the tax roll any property which was left off and shall examine, correct, and certify the tax roll.

(b) Any property owner may protest to the board that his property has not been properly classified. The board shall consider the protest, hear evidence, and enter its findings in the minutes.

Acts 1971, 62nd Leg., p. 488, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 55.676. LAW GOVERNING ADMINISTRATION OF BENEFIT TAX PLAN. In a district that levies taxes on a benefit basis, the rate of taxation and the assessment and collection of taxes shall be governed by the law relating to ad valorem taxes to the extent applicable.

Acts 1971, 62nd Leg., p. 488, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841 Sec. 4(r), eff. Jan. 1, 1982.

Sec. 55.677. IRRIGATING NONIRRIGABLE LAND. If land which is classed as nonirrigable is later irrigated by the district, before the owner of the land receives the water, he shall pay to the district an amount equal to the entire amount that would have been charged to the owner if the land had been originally classed as irrigable.

Acts 1971, 62nd Leg., p. 488, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER O. ADDING AND EXCLUDING TERRITORY, AND CONSOLIDATING DISTRICTS

Sec. 55.721. EXCLUSION OF NONAGRICULTURAL AND NONIRRIGABLE LAND FROM DISTRICT. Land located in the district which is classified as nonagricultural and nonirrigable may be excluded from the district in the manner provided in Subchapter J, Chapter 49.

Acts 1971, 62nd Leg., p. 490, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 26, eff. Sept. 1, 1995.

Sec. 55.750. CONSOLIDATION OF DISTRICTS. Two or more districts governed by the provisions of this chapter may consolidate into one district as provided by Sections 55.751-55.754.

Acts 1971, 62nd Leg., p. 495, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.751. ELECTIONS TO APPROVE CONSOLIDATION. (a) After the directors of each district have agreed upon the terms and conditions of consolidation, they shall order an election in each district to determine whether the districts should be consolidated.

(b) The directors of each district shall order an election to be held on the same day in each district and shall give notice of the election for at least 20 days in the manner provided by law for other elections.

(c) The districts may be consolidated only if the electors in each district vote in favor of the consolidation.

Acts 1971, 62nd Leg., p. 495, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.752. GOVERNING CONSOLIDATED DISTRICTS. (a) When two or more districts are consolidated, they become one district, except for the payment of debts created prior to consolidation, and are governed as one district.

(b) During a period of 90 days after the date of the election to approve consolidation, the officers of each district shall continue to act jointly as officers of the district to wind up the affairs of their respective districts.

(c) The consolidation agreement may provide that the officers of the original districts shall continue to act jointly as officers of the consolidated district until the next election or name persons to serve as officers of the consolidated district until the next election if all officers of the original districts agree to resign.

(d) New officers of the consolidated district must qualify as officers of the district within the period of 90 days after the

election and shall assume their offices at the expiration of the 90-day period.

(e) The current boards shall approve the bond of each new officer.

Acts 1971, 62nd Leg., p. 495, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.753. DEBTS OF ORIGINAL DISTRICTS. (a) When two or more districts are consolidated, the debts of the original districts are protected and are not impaired.

(b) These debts may be paid by taxes or assessments levied on the land in the original district as if it had not consolidated or contributions from the consolidated district on terms stated in the consolidation agreement.

Acts 1971, 62nd Leg., p. 496, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.754. TAXES OF THE ORIGINAL DISTRICT. (a) After consolidation, the officers of the consolidated district shall assess and collect taxes on property in the original district to pay debts created by the original district.

(b) If the officers of the consolidated district fail or refuse in due time to assess and collect taxes on property in the original district to pay the obligations of the original district, the taxes may be assessed and collected and paid on the obligations by a receiver acting under orders of a district court. A creditor or five or more taxpayers in the district may bring suit in a district court to have a receiver appointed.

Acts 1971, 62nd Leg., p. 496, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.755. EXCLUSION OF CERTAIN NONIRRIGATED LAND. If a district is principally engaged in providing water for agricultural irrigation or the primary purpose of the district is to provide water for agricultural irrigation, the board may exclude from the district land that is not being irrigated as provided by Sections 51.759 through 51.766. This section applies only to land that is eligible for exclusion under Section 51.759.

Added by Acts 1995, 74th Leg., ch. 42, Sec. 2, eff. Aug. 28, 1995.

SUBCHAPTER P. DISSOLUTION OF DISTRICT

Sec. 55.801. FAILURE TO FUNCTION. Subject to the provisions of Sections 50.251-50.256 of this code, if any district does not begin to acquire the necessary canals, ditches, flumes, laterals, reservoirs, sites, damsites, pumping plants, or other things necessary to the successful operation of the district or does not diligently pursue the purposes for which it was created within two years after its organization, the district may be dissolved without formal action.

Acts 1971, 62nd Leg., p. 496, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.802. RIGHTS OF DEBTORS IF DISTRICT FAILED TO FUNCTION. Any person with an interest in the district or a debt owed by the district may collect the debt in the manner provided for the collection of a debt due by any person, association of persons, or corporation. A court of competent jurisdiction may render judgment making the debt a lien against the property of the district and providing for the payment of the debt and judgment in the manner that a judgment for debt is enforced against a city or town that has been dissolved.

Acts 1971, 62nd Leg., p. 496, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.803. DISSOLUTION USING PROCEDURE FOR ORGANIZATION OF DISTRICTS. If all debts and obligations of the district have been paid and discharged, a district may dissolve voluntarily by the same vote and in the same manner provided in this chapter for the organization of districts. The election shall be held in the manner provided in this chapter for holding elections in the district.

Acts 1971, 62nd Leg., p. 496, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.804. DISSOLUTION USING PROCEDURE FOR ABOLITION OF DISTRICTS IN CHAPTER 56. A district may dissolve voluntarily in the

manner provided for the dissolution of districts in Chapter 56 of this code, and the provisions in that chapter shall control the abolition of the district and the legal consequences of abolition.

Acts 1971, 62nd Leg., p. 497, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 55.805. PAYMENT OF DEBTS ON DISSOLUTION OF DISTRICT. (a) All debts of districts dissolved under the provisions for the dissolution of districts in this subchapter shall be prorated against the lands in the district in accordance with the assessed valuation for the preceding year of the lands owned by each separate landowner, according to the tax rolls in the office of the tax collector of the county in which the land is located.

(b) The pro rata assessments shall be paid within five years from the date of dissolution in five equal annual installments or at any time within the five-year period.

(c) Any allowed claim owned by a landowner against whom a pro rata assessment has been made shall be credited on the liquidation of the assessment. All prior payments made by any landowner of the dissolved district shall be credited on the assessment against him and his land.

(d) The issuance of a receipt for the payment of the assessment by the proper official as provided in Chapter 56 of this code shall release the owner of the assessments and his land from the liens. The receipts may be recorded in the real estate records of the county or counties in which the land of the owner is located.

(e) When the assessment has been paid, the landowner is released automatically from the debt, and his land is released from all liens existing as security for the assessment.

Acts 1971, 62nd Leg., p. 497, ch. 58, Sec. 1, eff. Aug. 30, 1971.

CHAPTER 56. DRAINAGE DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 56.001. DEFINITIONS. In this chapter:

(a) "District" means any drainage district organized under this chapter.

(b) "Board" means the governing body of a drainage district.

(c) "Commissioners court" means the commissioners court of the county in which the district is organized.

Acts 1971, 62nd Leg., p. 497, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION TO ARTICLE XVI, SECTION 59, DISTRICT

Sec. 56.011. CREATION OF DISTRICT. A drainage district may be created in the manner prescribed by this subchapter, either under and subject to the limitations of Article III, Section 52, of the Texas Constitution, or under Article XVI, Section 59, of the Texas Constitution.

Acts 1971, 62nd Leg., p. 498, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.012. NAME OF EACH DISTRICT. The name of each district shall include the name of the county in which it is located and each district shall be numbered in consecutive order.

Acts 1971, 62nd Leg., p. 498, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.013. AREA INCLUDED IN A DISTRICT. A district may include all or part of any village, town, or municipal corporation, but land included in one district may not be included in any other drainage district.

Acts 1971, 62nd Leg., p. 498, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.014. PETITION. (a) Any person may present a petition to the commissioners court requesting the creation of a district. The petition shall be signed by at least 25 of the resident freehold taxpayers of the proposed district, or by at least one-third of the resident freehold taxpayers of the district if there are less than 75 of them, whose land might be affected by creation of the district.

(b) The petition shall state:

(1) the necessity, public utility, and feasibility of the proposed district;

(2) the proposed boundaries of the district; and
(3) the proposed name for the district.

Acts 1971, 62nd Leg., p. 498, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.015. DEPOSIT. (a) Any person filing a petition shall deposit with the clerk of the commissioners court cash, in an amount to be determined by the county election officer, which shall be held by the clerk until the result of the election to create the district and issue bonds is officially announced.

(b) If the result of the election favors creating the district, the clerk shall return the deposit to the petitioners or their agent or attorney, but if the result of the election is against the creation of the district, the clerk shall pay the cost and expenses of the election from the deposit with vouchers signed by the county judge and return the balance of the deposit to the petitioners or their agent or attorney.

Acts 1971, 62nd Leg., p. 498, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 2001, 77th Leg., ch. 298, Sec. 1, eff. Sept. 1, 2001.

Sec. 56.016. TIME OF HEARING. At the same meeting at which the petition is presented, the commissioners court shall schedule a hearing on the petition at a regular or special meeting of the commissioners court. The hearing must be held during the period beginning on the 30th day and ending with the 60th day after the day the petition is presented.

Acts 1971, 62nd Leg., p. 498, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.017. NOTICE. (a) The commissioners court shall order the clerk to give notice of the time and place of the hearing on the petition by posting a copy of the petition and order of the commissioners court during the 20-day period immediately preceding the day of the hearing in five public places in the county. The clerk shall post one of the copies at the courthouse door and the four other copies within the boundaries of the proposed district.

(b) The clerk is entitled to receive five cents a mile for each

mile necessarily traveled in posting the notices.

Acts 1971, 62nd Leg., p. 499, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.018. HEARING ON THE PETITION. At the hearing on the petition, any person whose land would be affected by creating the district may appear before the commissioners court and may contest the creation of the district or contend for its creation. The person may offer testimony to show that the district is or is not necessary and would or would not be a public utility and that creating the district would or would not be feasible or practicable.

Acts 1971, 62nd Leg., p. 499, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.019. FINDINGS. (a) At the hearing on the petition, if it appears to the commissioners court that drainage of the proposed district is feasible and practicable and is needed and would be conducive to public health or would be a public benefit or a public utility, the commissioners court shall make findings to this effect.

(b) If the commissioners court finds any of the issues in Subsection (a) of this section in the negative, it shall dismiss the petition at the cost of the petitioners.

(c) The findings of the commissioners court shall be recorded.

Acts 1971, 62nd Leg., p. 499, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.020. ENGINEER. (a) If the findings of the commissioners court under Section 56.019 of this code favor creating the district, the commissioners court shall appoint a competent civil engineer, who shall be entitled to as many assistants as necessary.

(b) The engineer and his assistants are entitled to the compensation and allowances for transportation, supplies, and other expenses agreed on by the engineer and the commissioners court.

Acts 1971, 62nd Leg., p. 499, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.021. ENGINEER'S BOND. The engineer shall execute a

bond for $500 with two or more sureties approved by the commissioners court, payable to the county judge for the use and benefit of the district, conditioned on the faithful performance of his duties under this chapter.

Acts 1971, 62nd Leg., p. 499, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.022. SURVEY AND PRELIMINARY PLANS. (a) Within the time prescribed by the commissioners court, the engineer shall make a careful survey of the land proposed to be drained and protected by levees. For the purposes of the survey, the engineer may go on land located inside or outside the district, including land located in a different county.

(b) The engineer shall obtain information regarding land and outlets inside the proposed district from the Texas Natural Resource Conservation Commission and from other sources, and he shall cooperate with the Texas Natural Resource Conservation Commission in the discharge of its duties.

(c) The engineer shall use the survey to make preliminary plans:

(1) locating approximately the necessary canals, drains, ditches, laterals, and levees;

(2) designating the streams and bayous necessary to be cleaned, deepened, and straightened;

(3) estimating the cost in detail of each contemplated improvement; and

(4) estimating the probable annual cost of maintaining the improvements.

(d) The engineer shall ascertain and procure proper and necessary outlets for the proposed canals, drains, and ditches necessary to drain the district.

(e) The engineer shall immediately make a report of his work to the commissioners court.

Acts 1971, 62nd Leg., p. 499, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 982, ch. 367, Sec. 29, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.146, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 11.331, eff. Sept. 1, 1995.

Sec. 56.023. MAP. (a) The engineer shall include with his report a map showing:

(1) the beginning point and outlets of canals, drains, ditches, and laterals;

(2) the length, width, depth, and slopes of the banks of any cut or excavation and the estimated number of cubic yards of earth necessary to be removed from each; and

(3) the location and size of levees and the estimated number of cubic yards of earth necessary to construct them.

(b) The engineer will comply sufficiently with Subsection (a) of this section if he describes the boundaries and provides the other information required by that subsection on a copy of the official land office map of the county in which the proposed district is located.

Acts 1971, 62nd Leg., p. 500, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.024. HEARING ON PRELIMINARY REPORT. (a) At the first regular or special meeting of the commissioners court after the engineer files his preliminary report with the clerk, the commissioners court shall schedule the report for hearing at a regular or special meeting, which must be held during the period beginning on the 20th day and ending with the 30th day after the day the commissioners court schedules the hearing.

(b) The clerk shall post notice of the hearing on the preliminary report in the manner provided in Section 56.017 of this code.

(c) At the hearing, any resident or nonresident freehold taxpayer whose land may be affected by the improvements, may appear and object to any of the improvements because they are not located at the proper places or they are not sufficient in number or capacity to properly drain the territory.

Acts 1971, 62nd Leg., p. 500, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.025. CHANGING THE PRELIMINARY REPORT. (a) The commissioners court may change the location of any improvement shown in the preliminary report or may add to or reduce the number of improvements. The commissioners court may order the engineer to

locate any additional canals, drains, ditches, or levees for the purpose of conducting water from the land of the district or to prevent overflow of water from streams or other bodies of water onto the land of the district to be drained.

(b) The commissioners court may refer the entire preliminary report to the engineer for compliance with its orders and may require the engineer to submit a further report.

(c) If material changes or alterations are made in the preliminary report, the clerk shall give notice, and the commissioners court shall hold a hearing in the manner provided for the original preliminary report.

Acts 1971, 62nd Leg., p. 500, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.026. ADOPTING THE PRELIMINARY REPORT. If there are no objections to the preliminary report or if the commissioners court finds that objections to the report are not valid, the report shall be approved and the approval entered in the minutes.

Acts 1971, 62nd Leg., p. 501, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.032. AUTHORIZING EXISTING DISTRICTS TO OPERATE UNDER ARTICLE XVI, SECTION 59, OF THE TEXAS CONSTITUTION. (a) Any existing district may be authorized to operate under the provisions of Article XVI, Section 59, of the Texas Constitution without change of name or impairment of obligations.

(b) To operate under Article XVI, Section 59, of the Texas Constitution, the board must adopt a resolution proposing the change and schedule a hearing on the resolution. The hearing must be held not earlier than the 30th day but not later than the 60th day after the date the resolution is adopted. The board shall give notice of the time and place of the hearing on the resolution by posting a copy of the resolution for at least the 20 days preceding the date of the hearing in five public places in the county. One of the copies shall be posted on the courthouse door and the other copies shall be posted within the boundaries of the district. Following the hearing, the board may adopt a resolution authorizing the district to operate under the provisions of Article XVI, Section 59, of the Texas Constitution.

(c) Any district operating under the provisions of this section is governed and controlled by the laws under which it was organized.

(d) Limitations imposed by Article III, Section 52, of the Texas Constitution and this chapter on debts to be incurred and taxes to be levied are not applicable to districts operating under Article XVI, Section 59, of the Texas Constitution.

Acts 1971, 62nd Leg., p. 502, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 2001, 77th Leg., ch. 298, Sec. 2, eff. Sept. 1, 2001.

Sec. 56.033. ALTERNATE PROCEDURE FOR CREATION. (a) The landowners of a defined area of territory not included in a district may file with the commissioners court a petition requesting an election on the creation of a district. The petition must:

(1) be signed by registered voters residing in the territory equal in number to at least five percent of the number of votes received in the territory to be included by all candidates in the most recent gubernatorial general election; and

(2) describe by metes and bounds the territory to be included in the district.

(b) The commissioners court shall call and hold a hearing to determine if the petition meets the requirements of Subsection (a).

(c) If the commissioners court determines the petition meets the requirements of Subsection (a), the court shall order an election held in the proposed district to determine whether or not the district should be created and whether or not the district should issue bonds and levy taxes to pay for the bonds.

(d) The provisions of this subchapter, other than Section 56.019, govern the hearing and election.

Added by Acts 1995, 74th Leg., ch. 958, Sec. 1, eff. June 16, 1995.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 56.061. CREATION OF BOARD. (a) A district is governed by a board of three directors unless special law provides otherwise.

(b) When a district is established, the commissioners court shall appoint three directors for the district to serve until permanent directors are elected.

Acts 1971, 62nd Leg., p. 502, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1999, 76th Leg., ch. 222, Sec. 1, eff. Sept. 1, 1999.

Sec. 56.062. ELIGIBILITY REQUIREMENTS FOR DIRECTORS. To be eligible to serve as a director, a person must satisfy the requirements of Section 141.001(a), Election Code.

Added by Acts 2001, 77th Leg., ch. 298, Sec. 3, eff. Sept. 1, 2001.

Sec. 56.064. ELECTION OF DIRECTORS. (a) For any district in which special law requires that directors be appointed, except when the special law otherwise provides, on petition of a majority of the real property taxpayers of a district requesting an election of district directors, the commissioners court shall immediately order an election to be held at the earliest legal time. The election shall be held as other elections under Chapter 49.

(b) The first elected directors of the districts in Calhoun, Matagorda, and Victoria Counties hold office until May 15 of the next succeeding odd-numbered year. Subsequent directors of the district are elected every two years on the first Saturday in May in each odd-numbered year, for a term of two years beginning on May 15 following the election.

Acts 1971, 62nd Leg., p. 503, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1975, 64th Leg., p. 1847, ch. 575, Sec. 1, 2, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 5216, ch. 951, Sec. 10, eff. Jan. 1, 1984; Acts 1987, 70th Leg., ch. 54, Sec. 25(o), eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 59, Sec. 1, eff. May 5, 1989; Acts 1995, 74th Leg., ch. 715, Sec. 27, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 222, Sec. 2, eff. Sept. 1, 1999.

Sec. 56.0641. ELECTION PROCEDURES. (a) In those districts referred to in Subsection (b) of Section 56.064, until otherwise ordered by the board of directors, the three persons receiving the highest number of votes at each election are elected. By order made before the 60th day preceding an election for directors, the board of directors in those districts referred to in Subsection (b) of Section 56.064 may order that the election of directors for that district

shall be by position or place, designated as Place No. 1, Place No. 2, and Place No. 3. The order shall designate the place numbers in relation to the directors then in office, and these place designations shall be observed in all future elections. The person receiving the highest number of votes for each position or place is elected. Once the board of directors has adopted the place system for election, neither that board nor their successors may rescind the action.

(b) A person wishing to have his name printed on the ballot as a candidate for director in those districts referred to in Subsection (b) of Section 56.064 shall file a signed application with the secretary of the board of directors not later than 5 p.m. of the 31st day preceding the election.

(c) The board of directors in those districts referred to in Subsection (b) of Section 56.064 shall order the election, appoint the election judges, canvass the returns, and declare the results of the election. In other respects, the procedures for conducting the election and for voting are as specified in the Texas Election Code. The expenses of holding the election shall be paid out of the construction and maintenance fund of the district.

Added by Acts 1975, 64th Leg., p. 1847, ch. 575, Sec. 3, eff. Sept. 1, 1975. Amended by Acts 1999, 76th Leg., ch. 222, Sec. 3, eff. Sept. 1, 1999.

Sec. 56.0642. APPLICABILITY TO SPECIAL LAW DISTRICTS. Subsection (b) of Section 56.064 and Section 56.0641 of this code apply to drainage districts created or governed by special law where the special law expressly adopts the provisions of Section 56.064 of this code or its predecessor statute (Article 8119, Revised Civil Statutes of Texas, 1925) or repeats its provisions, without change in substance, as those provisions existed at the time the special law was enacted; but they do not apply to any district established, reestablished, or otherwise affected by special law where the special law contains specific provisions relating to the method of selecting the governing body of the district which were at variance with the provisions of Section 56.064 of this code or its predecessor at the time the special law was enacted.

Added by Acts 1975, 64th Leg., p. 1848, ch. 575, Sec. 4, eff. Sept.

1, 1975. Amended by Acts 1999, 76th Leg., ch. 222, Sec. 4, eff. Sept. 1, 1999.

Sec. 56.069. TRANSFER OF BOARD'S POWER TO COMMISSIONERS COURT. (a) The functions, powers, rights, and duties exercised by or relating to the board of any district may be transferred to the commissioners court of the county in which the district is wholly located, but before the transfer is made, the commissioners court and the board must pass resolutions authorizing the transfer. In any district in which the board is elected, the transfer may not be made unless the transfer is approved by a majority of the voters voting on that issue at an election held in the district.

(b) After the transfer is made, the commissioners court shall be the sole governing body of the district and shall exercise the functions, powers, rights, and duties transferred.

(c) The members of the commissioners court are not entitled to receive any compensation for the exercise of these functions, powers, rights, and duties.

(d) On the passage of a resolution at a meeting of the board of the district, the commissioners court may be authorized to receive an allowance of not more than $150 a month for travel expense incurred by the commissioners incident to the discharge of their duties as members of the board of the district.

Acts 1971, 62nd Leg., p. 504, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1973, 63rd Leg., p. 1780, ch. 653, Sec. 4, eff. June 16, 1973; Acts 2001, 77th Leg., ch. 298, Sec. 4, eff. Sept. 1, 2001.

Sec. 56.082. HEARING; POWERS OF THE COMMISSIONERS COURT. (a) Except as otherwise provided in this chapter, the commissioners court has exclusive jurisdiction to hear and determine:

(1) contests and objections to creating a district;

(2) matters relating to creating a district; and

(3) all proceedings of a district during its organization.

(b) The commissioners court may adjourn a hearing from day to day, and the judgment of the commissioners court rendered under Subsection (a) of this section is final.

Acts 1971, 62nd Leg., p. 506, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Amended by Acts 1999, 76th Leg., ch. 222, Sec. 5, eff. Sept. 1, 1999.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 56.111. CONTROL AND REPAIR OF DISTRICT IMPROVEMENTS. The board may control and supervise the construction and maintenance of canals, drains, ditches and levees, and other improvements of the district and shall keep them in repair.

Acts 1971, 62nd Leg., p. 506, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.115. DUTIES OF THE ENGINEER. (a) The engineer shall make a map of the district showing:

(1) the boundary lines of the district;

(2) the original surveys within the boundaries of the district; and

(3) the number of acres in an original survey which are included in the district if the boundary lines of the district cross the original survey.

(b) The engineer shall make maps and profiles of the canals, drains, ditches, and levees located in the district and their outlets extending beyond the boundaries of the district.

(c) A copy of the land office map of the county which shows the name and number of each survey and the area or number of acres within the district is sufficient to comply with the requirement for a map of the district, and any recognized map of a city or town in the district is sufficient to comply with the requirement for a map of that city or town.

Acts 1971, 62nd Leg., p. 507, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.116. MAPS AND ESTIMATES. (a) The map and profile shall include the relation that each canal, drain, ditch, or levee bears to each tract of land through which it passes and the shape into which the canal, drain, ditch, or levee divides each tract.

(b) If any canal, drain, ditch, or levee cuts off any tract containing less than 20 acres of land, the map shall show:

(1) the number of acres divided from the tract;

(2) the number of acres in the whole tract;

(3) the shape of the small tract; and

(4) the relation of the small tract to the canal, ditch, drain, or levee.

(c) The profile may show the number of cubic yards necessary to be excavated to make each canal, drain, or ditch and to build any levee located in the district and may give the estimated cost of each.

(d) When the map, profile, and estimates are completed, the engineer shall sign them in his official capacity and file them with the clerk of the commissioners court.

Acts 1971, 62nd Leg., p. 507, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.120. RAILROAD CULVERTS. (a) At the expense of the district, the board may construct necessary bridges and culverts across or under a track or right-of-way of a railroad to enable the district to construct and maintain a necessary canal, drain, or ditch.

(b) Before the board constructs a bridge or culvert, the board shall give notice to the railroad authorities authorized to build or construct bridges and culverts and shall allow the railroad 30 days to build the bridge or culvert at its own expense and according to its own plans.

(c) Bridges or culverts shall be constructed so they will not interfere with the free and unobstructed flow of water passing through the canals and drains and shall be placed at points designated by the engineer.

Acts 1971, 62nd Leg., p. 508, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.121. ROAD CULVERTS. The board shall build necessary bridges and culverts across or over canals, drains, ditches, laterals, and levees which cross a county or public road and shall pay for the construction with funds of the district.

Acts 1971, 62nd Leg., p. 508, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.122. CONSTRUCTING BRIDGES AND CULVERTS IN CERTAIN

COUNTIES. (a) If it is necessary to build a bridge or culvert across or over a state highway located in a county having a population of more than 350,000 inhabitants, according to the last preceding federal census, the board may construct or assist in constructing the bridge or culvert.

(b) After the bridge or culvert is constructed, the board may pay or may join with any county or other governmental agency or subdivision to pay the expenses of making necessary and needed repairs. The expenses shall be paid from the funds of the district.

Acts 1971, 62nd Leg., p. 508, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.123. CHANGE IN PLANS WITHOUT ADDITIONAL EXPENDITURES. (a) After the board authorizes bonds to be issued, the board may make changes in the district or its improvements which will be an advantage to the district but which will not increase the cost of the proposed work beyond the amount of bonds authorized.

(b) The board may make the changes by entering on their minutes a notation of the changes, with the district maps and profiles showing the changes. Notice of the changes shall be given by publishing the notation with the book and page number of the minutes for two consecutive weeks in a newspaper of general circulation published in the English language in the county in which the district is located.

Acts 1971, 62nd Leg., p. 509, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1999, 76th Leg., ch. 222, Sec. 6, eff. Sept. 1, 1999.

Sec. 56.124. CHANGE IN PLANS WITH ADDITIONAL EXPENDITURES. (a) If the board decides that changes or additions in the preliminary survey would be of advantage to the district but would necessitate issuing additional bonds of the district, it shall certify the need for additional bond authorization and file the certification with maps and profiles prepared by the district engineer showing the changes and their estimated cost in the district office.

(b) At the first regular meeting after the documents are filed, the board shall give notice of an election to determine whether or not the changes and improvements should be made and shall order the election held within the time and the returns made as provided in the

original election.

(c) If two-thirds of the electors of the district vote in favor of the proposition, the board shall enter the approval in the records and shall order the bonds issued as in the manner provided for issuance of the original bonds.

Acts 1971, 62nd Leg., p. 509, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1999, 76th Leg., ch. 222, Sec. 7, eff. Sept. 1, 1999.

Sec. 56.125. ADDITIONAL IMPROVEMENTS. (a) After completion of improvements, including bridges and culverts, and after payment of all expenses, if surplus money or bonds remain to the credit of the district, the board may order the engineer to make a detailed report of additional or supplemental drains, ditches, levees, or other surface drainage improvements, including tile drainage, which are needed by the district. The engineer shall make the report and the board shall act on the report in the manner provided in this chapter for the initial report of the engineer.

(b) After the engineer's report is approved or modified by the board, the board shall order an election to be held in the district at the earliest legal time. The only proposition that may be submitted at the election is whether or not the district will construct additional improvements and pay for them with funds currently available. A majority of those persons voting at the election must approve the proposition for it to carry.

(c) Notice of the election shall be given, election officials appointed, returns made and canvassed, and the result declared as provided in Sections 56.027-56.031 of this code. The notice of election shall state:

(1) the character and scope of the proposed improvements;

(2) the estimated cost of the proposed improvements; and

(3) the time and place for holding the election.

(d) The provisions of this chapter relating to awarding contracts, constructing improvements, and the authority of the board and the commissioners court to award contracts and construct improvements apply as far as applicable to constructing and paying for additional improvements.

(e) The estimated cost of the additional improvements may not be more than the amount of surplus money or bonds to the credit of

the district.

Acts 1971, 62nd Leg., p. 509, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1999, 76th Leg., ch. 222, Sec. 8, eff. Sept. 1, 1999.

Sec. 56.126. CHANGES, ADDITIONS, AND IMPROVEMENTS. When the board determines that a necessity exists, it may make changes in, additions to, and improvements in the drainage system of the district and shall pay for the changes, additions, and improvements with funds collected under the provisions of Section 56.242 of this code.

Acts 1971, 62nd Leg., p. 510, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.128. INJURING DRAINAGE CANAL OR DITCH. Any person who wilfully fills up, cuts, injures, destroys, or impairs the usefulness of any canal, drain, ditch, watercourse, or other work constructed, repaired, or improved by a district to drain and protect from overflow of water, upon conviction is punishable by confinement in the county jail for not more than two months or by a fine of not more than $1,000.

Acts 1971, 62nd Leg., p. 510, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 2001, 77th Leg., ch. 298, Sec. 5, eff. Sept. 1, 2001.

Sec. 56.135. INTEREST IN DRAINAGE CONTRACT. A county judge, county commissioner, director of the board, or drainage engineer who becomes interested in any contract for construction of any work by the district or in any fee paid by the district from which he will receive money, consideration, or other thing of value, upon conviction is punishable by confinement in the county jail for not less than six months nor more than one year.

Acts 1971, 62nd Leg., p. 512, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1999, 76th Leg., ch. 222, Sec. 9, eff. Sept. 1, 1999.

Sec. 56.140. PUBLIC AND PRIVATE IMPROVEMENTS. (a) Canals, drains, ditches, and levees which are constructed by a district and

watercourses which are cleaned or constructed by a district are the public property of the district.

(b) A person who owns land in the district may drain into one or more of the public drains, and at his own expense, the landowner may make drains according to the natural slope of the land through other lands intervening between his land and the nearest public drain or watercourse or along any public highway.

(c) Before constructing any drains, the landowner shall notify the board of his intention to construct a drain through another person's land or along a public highway, and the directors shall go on the premises and acting as a jury of view shall determine the place for constructing the drain.

Acts 1971, 62nd Leg., p. 513, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.141. OUTSIDE DRAINS. (a) Before a person artificially drains adjacent land located outside the district into the canals, drains, or ditches of the district, the person must submit a written application to the board, and the board must grant permission to make the connections. The application shall include the width, depth, and length of the connecting drains and ditches.

(b) When the application is filed with the board, the engineer shall estimate the quantity of water which the connecting drains or ditches would probably empty into the established canals or drains and shall indicate whether or not the established canals or drains have sufficient capacity to carry the excess water without risk or damage to the canals, drains, or adjacent territory. The engineer shall report to the board the result of his examination and his estimate.

(c) Unless an agreement is reached with the applicants, the board may authorize the connection on condition that the applicant first pay to the construction and maintenance fund an amount of money which bears the same ratio to the cost of the original canal or drain from the point of connection to its outlet as the water to be emptied into the canal or drain by the connecting drains bears to the water then flowing into and being carried by the original canal or drain as estimated by the engineer.

Acts 1971, 62nd Leg., p. 513, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1999, 76th Leg., ch. 222, Sec. 10, eff. Sept. 1,

1999.

Sec. 56.142. ENLARGEMENT OF CANALS, DRAINS, AND OTHER OUTLETS. (a) If the engineer's report indicates that the capacity of the canals, drains, or outlets of the district are insufficient to carry the excess water that would be discharged into them by connecting drains or that the additional discharge of water will endanger the canals and drains or the lands and property adjacent to them, the board may give the applicant permission to construct connecting drains and secure the desired outlet on condition that the applicant make necessary enlargements of the canals and drains of the district at the applicant's own expense. The increased capacity of the canals of the district shall be sufficient to carry any increase of water caused by the connection without danger to canals and drains or lands adjacent to them.

(b) The engineer shall supervise and direct the enlargement of the canals and drains, and after the work is completed to his satisfaction, the engineer shall report to the board under his official certificate. The report shall show:

(1) the kind of work done;

(2) the extent of the work;

(3) the new capacity to be sufficient to carry excess water from the connecting drain;

(4) the number of days spent by the engineer supervising the work; and

(5) the amount due to the engineer for his services.

(c) On approving the engineer's report, the board shall issue an order authorizing the connections to be made with the canals and drains on payment of the amount due to the engineer as shown by the engineer's report and shall order the applicant to pay the engineer's salary.

Acts 1971, 62nd Leg., p. 514, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1999, 76th Leg., ch. 222, Sec. 11, eff. Sept. 1, 1999.

Sec. 56.143. CONTRACT FOR IMPROVEMENTS WITH THE UNITED STATES. (a) Any district which is converted under Section 56.032 of this

code and which lies wholly within one county may enter into contracts with the United States, including the Bureau of Reclamation of the Department of Interior, to construct improvements.

(b) The board must approve the project, plans and specifications, and methods of constructing or reconstructing the improvements.

(c) After approval, the board may execute a contract for a specified number of years or until the plans or programs of the district are completed and shall pay the obligations incurred under the contract by issuing bonds that are approved by the voters in the manner provided for issuing other bonds of the district. The board shall deliver the bonds to the United States.

Acts 1971, 62nd Leg., p. 514, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.144. INTERLOCAL AGREEMENTS. A district created pursuant to this chapter, special law or other general law may enter into an interlocal agreement with another political subdivision to accomplish the purposes set forth in Article III, Sections 52(b)(1), (2), and (3), of the Texas Constitution. In the event the jurisdictional boundaries of two or more districts or political subdivisions contain all or part of the same watershed of a waterway and one or more of the other districts or political subdivisions determines that the construction of improvements in the watershed would be a public benefit and accomplish the purposes set forth in Article III, Sections 52(b)(1), (2), and (3), of the Texas Constitution, the district or political subdivision shall propose an interlocal agreement to the governing bodies of the other districts or political subdivisions sharing jurisdiction within the watershed. If an interlocal agreement is not executed within 120 days from the date it is submitted to all of the districts and political subdivisions sharing jurisdiction within the watershed, the district or political subdivision proposing the improvements may petition the commission for approval of the proposed improvements. The commission shall conduct a hearing on the proposed improvements and upon a finding that the improvements would be a public benefit, shall approve the plan for the improvements, and the district or political subdivision proposing the improvements shall be authorized to implement the plan within the boundaries of the other district or

political subdivision.

Added by Acts 1995, 74th Leg., ch. 958, Sec. 3, eff. June 16, 1995.

SUBCHAPTER E. GENERAL FISCAL PROVISIONS

Sec. 56.182. DISTRICT FUNDS. (a) The construction and maintenance fund consists of money, effects, property, and proceeds received by the district from any source except that portion of tax collections necessary to pay principal and interest on bonded indebtedness.

(b) The interest and sinking fund consists of that portion of tax collections necessary for paying principal and interest on bonded indebtedness, and this fund may be invested for the benefit of the district as provided by law.

(c) Each fund shall be held for the purpose for which it was created, and if money is improperly paid from either fund, the board may transfer money in the two funds to restore the fund which was improperly used.

Acts 1971, 62nd Leg., p. 515, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 2001, 77th Leg., ch. 298, Sec. 6, eff. Sept. 1, 2001.

SUBCHAPTER F. ISSUANCE OF BONDS AND NOTES

Sec. 56.201. AUTHORITY TO ISSUE BONDS. Any district may issue bonds as provided in this chapter to pay for drainage improvements.

Acts 1971, 62nd Leg., p. 515, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.202. ISSUANCE OF BONDS. When maps, profiles, and estimates are filed, the board shall issue an order directing the issuance of bonds sufficient to pay for proposed improvements together with necessary, actual, and incidental expenses. The bonds may not be issued in an amount greater than the amount specified in the order and notice of election, and in districts operating under Article III, Section 52, of the Texas Constitution, the bonds may not be issued in an amount greater than one-fourth of the assessed valuation of the real property of the district.

Acts 1971, 62nd Leg., p. 516, ch, 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 2001, 77th Leg., ch. 298, Sec. 7, eff. Sept. 1, 2001.

Sec. 56.203. RECORD BOOK FOR BONDS. (a) Before any bonds are issued, the board shall provide a well-bound book in which the board shall keep a record of:

(1) all bonds which have been issued;

(2) the numbers of the bonds;

(3) the amount of the bonds;

(4) the rate of interest on the bonds;

(5) the date of issuance of the bonds;

(6) the date on which the bonds are due;

(7) the place where the bonds are payable;

(8) the amount received for the bonds;

(9) the annual rate of assessment to pay interest on and provide a sinking fund for the bonds; and

(10) the payment of each bond.

(b) The board shall keep the book open at all times for public inspection by district taxpayers and bondholders.

Acts 1971, 62nd Leg., p. 516, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 2001, 77th Leg., ch. 298, Sec. 7, eff. Sept. 1, 2001.

Sec. 56.204. BONDS: REQUISITES. (a) Bonds shall be issued in the name of the district, signed by the board president, and attested by the board secretary, and each bond shall have the seal of the district affixed to it.

(b) The bonds shall be issued in denominations and shall bear interest as authorized by the board.

(c) The terms of the bonds shall include the time, places, manner, and conditions of payment and the rate of interest determined and ordered by the board.

(d) The bonds shall be paid not later than 40 years from the date they are issued.

Acts 1971, 62nd Leg., p. 516, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 2001, 77th Leg., ch. 298, Sec. 8, eff. Sept. 1, 2001.

Sec. 56.205. BONDS: APPROVAL. (a) After the bonds are sold, the district shall submit to the attorney general:

(1) the actual bonds;

(2) a certified copy of the board's order levying a tax to pay interest and create a sinking fund;

(3) a statement of the district's total bonded indebtedness including the value of the bonds proposed to be issued and the value of taxable property in the district as shown by the last official assessment of the appraisal district in which the district participates; and

(4) other information the attorney general requires.

(b) The attorney general shall examine the bonds carefully and shall certify them if he finds that they conform to the constitution and laws of this state and are valid and binding obligations of the district.

Acts 1971, 62nd Leg., p. 516, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 9, eff. Sept. 1, 2001.

Sec. 56.207. BONDS: SALE. (a) The board shall advertise and sell the bonds on the best terms and for the best price possible.

(b) The board shall deposit all money from the sale of the bonds as it is received into the construction and maintenance fund of the district.

Acts 1971, 62nd Leg., p. 517, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 10, eff. Sept. 1, 2001.

Sec. 56.209. USE OF UNSOLD BONDS FOR MAINTENANCE PURPOSES. If any bonds remain unsold which are not required to complete improvements, the board may enter its consent on the public record to sell the bonds and place the proceeds in the construction and maintenance fund for use in accomplishing the purposes stated in Section 56.242 of this code.

Acts 1971, 62nd Leg., p. 517, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 10, eff. Sept. 1, 2001.

Sec. 56.210. REFUNDING BONDS. (a) A district may refund outstanding bonds by issuing new bonds as provided by Chapter 1207, Government Code.

(b) The district shall issue the bonds in denominations to be determined by the board and shall levy a tax sufficient to meet the payment of principal and interest of the refunding bonds before the bonds are delivered.

Acts 1971, 62nd Leg., p. 518, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 10, eff. Sept. 1, 2001.

Sec. 56.211. REFUNDING BOND ELECTION. (a) If indebtedness to be refunded includes obligations other than voted bonds, in any district operating under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, before the refunding bonds may be issued, a majority of the electors of the district voting at an election called for that purpose must vote in favor of issuing the refunding bonds and levying a tax to pay for the bonds.

(b) The board shall call the election and the secretary of the board shall give notice of the time and places for holding the election.

(c) The notice shall be signed by the secretary and shall

(1) state the purpose of the election;

(2) state the proposition to be voted on;

(3) define the election precincts;

(4) prescribe the polling places in the district; and

(5) list the names of the election officers.

(d) The notice shall be published once a week for three consecutive weeks in a newspaper of general circulation in the county in which the district is located, but if a newspaper is not published in the county, the notice shall be published in the nearest county. The first publication shall be at least 20 days before the day of the election.

Acts 1971, 62nd Leg., p. 518, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1971, 62nd Leg., p. 1768, ch. 518, Sec. 8, eff. May 31, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 11, eff.

Sept. 1, 2001.

Sec. 56.212. APPROVAL AND ISSUANCE OF REFUNDING BONDS. (a) If the board declares the result of the election under Section 56.211 of this code to favor the issuance of refunding bonds and the levy of a tax to pay for the bonds, refunding bonds with the seal of the district affixed to them may be issued in the name of the district. The bonds shall be signed by the board president and attested and registered by the board secretary.

(b) The bonds together with the record relating to them shall be submitted to the attorney general for his approval, as required by Section 49.184.

(c) When the attorney general approves the bonds, they shall be delivered to the comptroller who shall register them and deliver them in exchange for or on release of the obligations being refunded at the time, in the manner, and in the amounts prescribed in the order of the board. If the obligations being refunded are evidenced by outstanding securities, the comptroller shall cancel the outstanding securities concurrently with the registration and delivery of the bonds.

(d) When the refunding bonds are approved by the attorney general and registered and delivered by the comptroller, the bonds are valid and binding obligations of the district and are incontestable for any cause.

Acts 1971, 62nd Leg., p. 519, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 12, eff. Sept. 1, 2001.

Sec. 56.213. TAX ANTICIPATION NOTES; BOND ANTICIPATION NOTES. (a) A district may borrow money by issuing negotiable tax anticipation notes or bond anticipation notes if the board finds that the district has an insufficient amount of money available to:

(1) pay the principal of or interest on any district bond payable in whole or in part by taxes; or

(2) meet any other need of the district.

(b) The district may issue tax anticipation notes or bond anticipation notes without giving notice or otherwise advertising the

issuance of the notes.

(c) A tax anticipation note or bond anticipation note must mature not later than one year after the date the note is issued.

(d) The district may issue tax anticipation notes for any purpose for which the district is authorized to levy taxes. The notes must be secured with the proceeds of taxes to be levied by the district in the 12-month period following issuance of the note. The district may covenant with purchasers of the notes that the district will levy a tax sufficient to pay the principal of and interest on the notes and to pay the costs of collecting the tax.

(e) The district may issue bond anticipation notes for any purpose for which bonds of the district have been approved by voters or to refund previously issued bond anticipation notes. A district may covenant with purchasers of the notes that the district will use the proceeds of the sale of any district bonds in the process of issuance to refund the notes. A district that covenants under this subsection shall use the bond proceeds to pay the principal, interest, or redemption price on the notes.

(f) A district required to seek commission approval of bonds must have an application for approval of a bond on file with the commission before issuing bond anticipation notes secured by the bond.

Added by Acts 1995, 74th Leg., ch. 1052, Sec. 2, eff. June 17, 1995.

SUBCHAPTER G. TAXATION PROVISIONS

Sec. 56.241. LEVY OF TAXES TO PAY FOR BONDS. After bonds are authorized at an election, the board shall have taxes annually assessed and collected on all property in the district sufficient to pay interest and principal on the bonds. Taxes collected under this section shall be placed in the interest and sinking fund.

Acts 1971, 62nd Leg., p. 519, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 13, eff. Sept. 1, 2001.

Sec. 56.242. MAINTENANCE TAX. (a) The board shall have a tax assessed and collected on district property sufficient to maintain, repair, and preserve district improvements and to pay legal debts,

demands, and obligations of the district, but in districts operating under Article III, Section 52, of the Texas Constitution, the tax may not be in an amount greater than one-half of one percent of the total assessed valuation of the district for that year.

(b) Taxes collected under this section shall be placed in the construction and maintenance fund.

(c) The board may issue negotiable notes payable from the maintenance tax authorized by Subsection (a) to meet the financial obligations of the district, as described by Subsection (a). The notes shall be payable over a period not to exceed five years from the date of issuance. Notes issued under this subsection are not required to be approved by the Texas Natural Resource Conservation Commission. A district may not have outstanding, at any one time, notes in excess of $3 million under this subsection.

(d) The board may issue negotiable notes to pay any lawful expenditure of the district, other than principal and interest on debt, including all costs to improve or repair any existing drainage canal, ditch, watercourse, or other work constructed, repaired, or improved by the district. The notes may be payable from and secured by a lien on and pledge of any available funds of the district, including the proceeds of a maintenance tax. Notes issued under this subsection shall be payable over a period not to exceed 20 years from the date of issuance and if issued for a term longer than one year must be treated as "debt" as defined by Section 26.012, Tax Code. The maximum debt service on all notes issued under this subsection may not exceed in any fiscal year of a district an amount that could be paid from the proceeds of one-fourth of the maximum tax the district is authorized by law to levy on the date any notes are issued.

Acts 1971, 62nd Leg., p. 519, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 14, eff. Sept. 1, 2001.

Sec. 56.247. LEVYING TAXES ON THE BENEFIT BASIS. A district operating under Article XVI, Section 59, of the Texas Constitution, may levy taxes on the benefit basis, which means the levy of a tax on an equal or uniform basis or rate on each acre of land in the district.

Acts 1971, 62nd Leg., p. 520, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.248. AUTHORIZING TAXATION ON THE BENEFIT BASIS FOR NEWLY CREATED DISTRICTS. (a) In a petition to create a district under Article XVI, Section 59, of the Texas Constitution, the petitioner may request that taxes in the proposed district be levied on the benefit basis, and the notice of hearing on the petition shall state this request in addition to other information required by V.T.C.A., Water Code Sec. 56.017.

(b) At the hearing on the petition, the commissioners court shall consider whether or not it will be fair and equitable to levy taxes on the benefit basis, and any person who would be affected by creation of the district may appear before the commissioners court and support or oppose the levy of taxes on the benefit basis.

(c) If the commissioners court finds that creation of and drainage of the district is feasible and practicable under V.T.C.A., Water Code Sec. 56.019, the commissioners court shall further determine whether or not the levy of taxes on the benefit basis would be fair and equitable to the landowners in the district.

(d) If the commissioners court determines that levying taxes on a benefit basis would not be fair and equitable to the landowners, the order of the commissioners court shall state these findings, and if the district is created, district taxes shall be levied on an ad valorem basis.

(e) If the commissioners court favors creation of the district and determines that levying taxes on a benefit basis will be fair and equitable to the landowners, the order of the commissioners court shall include these findings and an election shall be called to create the district and levy taxes on the benefit basis.

(f) Findings of the commissioners court relating to the basis on which taxes will be levied are final and conclusive on all parties.

Acts 1971, 62nd Leg., p. 521, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.249. AUTHORIZING TAXATION ON THE BENEFIT BASIS FOR EXISTING DISTRICT. (a) A district may levy taxes on the benefit basis as provided in this section.

(b) Any person may present to the board a petition, signed by 75 of the resident freehold taxpayers of the district whose land would be affected or by one-third of the freehold resident taxpayers of the district whose land would be affected if there are less than 75 in the district, requesting that taxes of the district be levied on the benefit basis and showing that the levy of taxes on the benefit basis will be fair and equitable to all landowners in the district.

(c) At the same meeting at which the petition is presented, the board shall schedule a hearing on the petition for either a regular meeting or a special meeting called for that purpose to be held during the period beginning on the 30th day and ending with the 60th day after the day the petition is presented.

(d) The board shall give notice of the time and place of the hearing by posting a copy of the petition and the order of the board at five public places in the county during the 20-day period immediately preceding the day of the hearing. The board shall post one of the copies at the courthouse door and the other four copies at four places within the boundaries of the district.

(e) At the hearing, any person whose land would be affected may appear before the board and may support or oppose the levy of taxes on a benefit basis and may offer testimony to show whether or not the levy of taxes on the benefit basis will be fair and equitable to landowners in the district. The board has exclusive jurisdiction to hear and determine this issue and matters relating to it and has exclusive jurisdiction in all subsequent proceedings. The board may adjourn the hearing from day to day, and judgments of the board are final.

(f) If the board finds that levying taxes on the benefit basis will not be fair and equitable to landowners in the district, an order shall be entered dismissing the petition, and the district shall continue to levy taxes on an ad valorem basis, but if the board finds that levying taxes on the benefit basis will be fair and equitable to landowners in the district, the board shall order an election to be held in the district.

(g) An election to approve the levy of taxes on the benefit basis must be held on the earliest legal date that occurs on or after the 30th day after the date the board orders the election. Notice of the election shall be given in the same manner as notice is given for the hearing on the petition. The board shall name polling places

within the district and shall appoint judges and other necessary election officers. The ballots shall be printed to provide for voting for or against the following proposition: "The levy of taxes in the district on the benefit basis."

(h) At least two-thirds of those persons voting in the election must vote in favor of the proposition for it to carry.

(i) If the proposition carries at the election, the order of the board canvassing the election shall provide that taxes of the district are to be levied on the benefit basis, but if the proposition fails to carry at the election, the order of the board canvassing the election shall provide that taxes of the district are to continue to be levied on an ad valorem basis.

Acts 1971, 62nd Leg., p. 521, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 15, eff. Sept. 1, 2001.

Sec. 56.250. LAW GOVERNING DISTRICTS LEVYING TAXES ON THE BENEFIT BASIS. A district that levies taxes on the benefit basis is governed by the provisions of this chapter. However, the rate of taxation and the assessment and collection of taxes is governed by the law relating to ad valorem taxes to the extent applicable and not inconsistent with this chapter.

Acts 1971, 62nd Leg., p. 522, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 56.251. DETERMINING ACREAGE IN THE DISTRICT. (a) In districts levying taxes on the benefit basis, the board shall appoint three freehold taxpaying voters in the district as a committee to determine the number of acres of land owned by each landowner in the district. A person appointed by the board shall qualify by taking an oath to fairly and impartially hold hearings and determine acreage.

(b) The committee to determine acreage shall give notice of the time and place of the hearing on the acreage before the 10-day period immediately preceding the day of the hearing.

(c) At the hearing each landowner may testify about the amount of land owned by him in the district. The committee has final

jurisdiction to determine the exact acreage of each landowner in the district.

(d) After the committee makes its determination, the land in the district shall be annually placed on the tax rolls according to the acreage determined without rendition of taxes.

Acts 1971, 62nd Leg., p. 521, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 15, eff. Sept. 1, 2001.

SUBCHAPTER H. DISSOLUTION

Sec. 56.291. AUTHORITY TO DISSOLVE A DISTRICT. Subject to the provisions of Sections 50.251-50.256 of this code, a district created under this chapter may be dissolved as provided in this subchapter.

Acts 1971, 62nd Leg., p. 523, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.292. PETITION. At a regular meeting of the board, any resident freehold taxpayer of the district may present a petition signed by at least five percent of the qualified voters of the district, or if there are fewer than 100 resident freehold taxpayers in the district, then by one-third of the resident freehold taxpayers requesting the dissolution of the district, and on verification of the petition signatures, the board shall order an election to be held in the district at the earliest legal time to determine whether or not the district should be dissolved.

Acts 1971, 62nd Leg., p. 523, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 15, eff. Sept. 1, 2001.

Sec. 56.293. DEPOSIT. (a) Any person filing a petition shall deposit with the board an amount sufficient to pay the cost of conducting an election within the district which shall be held by the board until the result of the election to dissolve the district is officially announced and entered in the record of the district.

(b) If the result of the election favors dissolving the district, the board shall return the deposit to the petitioners or

their agent or attorney, and the cost and expenses of holding the election shall be paid by the district, but if the result of the election is against dissolving the district, the board shall pay the cost and expenses of the election from the deposit and return the balance of the deposit to the petitioners or their agent or attorney.

Acts 1971, 62nd Leg., p. 523, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 15, eff. Sept. 1, 2001.

Sec. 56.294. ELECTION. (a) Notice of the election to dissolve the district shall be posted and the election shall be held as provided by this chapter for elections to create a district.

(b) The ballots for the election shall be printed to provide for voting for or against the following proposition: "Dissolution of the drainage district."

(c) For the proposition to carry, two-thirds of those persons voting at the election must vote to dissolve the district.

Acts 1971, 62nd Leg., p. 523, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.295. RESULT OF THE ELECTION. (a) The returns of the election shall be made and the votes canvassed as provided in this chapter.

(b) If the proposition carries, the board shall declare the result and enter it in its minutes substantially as follows:

"_____ and _____ others having petitioned for the dissolution of _____ County Drainage District No. ___; an election having been held in the district on _____; and a two-thirds majority of the votes cast in the election having favored dissolution of the district; now, therefore, the board of directors declares that _____ Drainage District No. ___ is dissolved."

(c) If the proposition fails to carry, another election for the same purpose may not be held for at least two years after the results of the election are declared.

Acts 1971, 62nd Leg., p. 523, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 16, eff. Sept. 1, 2001.

Sec. 56.296. SETTLEMENT OF DEBTS. (a) When the district is dissolved, the commissioners court shall provide for settlement of debts of the district, including costs and expenses of holding the dissolution election, and may levy and collect a tax on property in the district in the amount necessary to pay all valid debts and obligations of the district except district bonds.

(b) Unless district bonds are retired as provided in Section 56.299 of this code, the bonds shall be paid according to their terms by levy and collection of an annual tax.

Acts 1971, 62nd Leg., p. 524, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.297. DISSOLUTION TAX. (a) The commissioners court shall determine the amount of debt owed by the district and shall apportion the amount of the debt among the property taxpayers of the district, and a tax shall be levied on each piece of property in the district to pay for its proportionate share of the debt. Each taxpayer may pay his tax annually or in one payment, and the amount of debt apportioned to each tract of land is a lien on that piece of land for the payment of the debt.

(b) Payment of taxes under this section may be made either in money or by surrender of bonds or other evidences of debt of the district. Any holder or owner of debt owed by the district may surrender his bonds and coupons or approved accounts to the district tax collector to pay for taxes owed on property in the district which is owned by the holder or owner of the debt, and when surrendered, the bonds or evidences of debt shall be marked paid and a receipt issued for them. The holder of bonds and coupons may only surrender coupons that are matured at the time of their surrender, and unmatured bonds are eligible only to pay unmatured tax liability in advance and only for the year in which the bonds mature.

(c) After taxes are paid as provided in this section, the taxpayer and his property are released from further liability for debts of the district, and the district tax collector shall issue a release and a receipt for the taxes which shall be filed with the clerk of the county court in the county in which the property is located in the manner provided by law for filing documents relating

to real estate.

Acts 1971, 62nd Leg., p. 524, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.299. RETIREMENT OF BONDS. If there are outstanding bonds at the time the district is dissolved, the commissioners court may immediately enter into negotiations with the bondholders to retire the bonds before maturity, and if under their terms or by agreement between the commissioners court and the bondholders, the bonds can be retired at an earlier date than appears on their face and if the commissioners court considers retirement to be feasible and practicable, an agreement may be made by the commissioners court providing for paying and retiring the bonds.

Acts 1971, 62nd Leg., p. 525, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.300. TRUSTEE. On filing and approval of a bond, the county treasurer becomes the trustee for the dissolved district.

Acts 1971, 62nd Leg., p. 525, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.301. TRUSTEE'S BOND. The county treasurer shall execute a good and sufficient bond in a sum to be determined by the commissioners court, payable to and approved by the county judge, conditioned on the faithful performance of his duties as treasurer and trustee of the district and on paying to the parties entitled to it all money and other property which he receives as trustee and treasurer. The bond shall be recorded in the minutes of the commissioners court, and on approval shall supersede the bond given by the county treasurer as treasurer of the district.

Acts 1971, 62nd Leg., p. 525, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.302. TRUSTEE'S COMPENSATION. (a) The trustee is entitled to receive for his services one percent of all money received by him for the dissolved district and one percent on all money he pays out under this subchapter, but he is not entitled to

receive a commission on money controlled by him when the district was dissolved or money relinquished by him at the expiration of his trusteeship.

(b) Only one compensation shall be paid to the trustee for his services as trustee and ex officio treasurer of the dissolved district.

Acts 1971, 62nd Leg., p. 525, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.303. POWERS OF THE TRUSTEE. (a) The commissioners court shall provide for disposition and sale of district property, and after giving the required bond, the trustee shall assume control from the commissioners court of the district's property, including money in the district treasury and books, notes, accounts, and choses of action.

(b) The trustee may sue any person in possession of property of the district or owing a debt to the district as though the district were still organized and may employ counsel to assist him in all suits and in the care and management of the business of the dissolved district.

Acts 1971, 62nd Leg., p. 525, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.304. EXPENSES OF THE TRUSTEE. (a) The trustee shall charge against the trust estate all reasonable expenses incurred by him in caring for, conducting, and controlling the business of the district, in employing counsel for the district, and in conducting or defending suits, and on posting notice as required in cases of other claims, the trustee shall present the charges to the commissioners court annually at a regular meeting.

(b) On approval by the commissioners court, the expenses become a valid and subsisting claim against the district and may be retained by the trustee out of funds controlled by him as treasurer of the dissolved district.

(c) If the claim for expenses is rejected either in whole or in part, the trustee may appeal the decision as other claimants appeal decisions under this subchapter.

Acts 1971, 62nd Leg., p. 526, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.305. PRESENTATION OF CLAIMS. (a) Within the six-month period immediately following approval of the trustee's bond, any person who has a claim against the district shall present the claim duly verified to the trustee, and if the trustee finds that the claim is correct, he shall allow the claim, and the claimant shall file the claim with the clerk of the commissioners court before the beginning of the 20-day period immediately preceding the next regular meeting of the commissioners court.

(b) The clerk shall immediately issue notice of the filing to all persons interested in the district, and the notice shall be posted in three public places and at the courthouse door before the beginning of the 20-day period immediately preceding the next regular meeting of the commissioners court.

Acts 1971, 62nd Leg., p. 526, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.306. APPROVAL OF CLAIM. (a) At a regular meeting, the commissioners court shall determine the validity of the claim, and if the commissioners court finds that the claim is correct, it shall approve the claim and enter an order of approval in its minutes.

(b) After the claim is approved, it is a valid and subsisting claim against the district and shall be filed with the trustee who shall pay the claim in the order it was filed from the district treasury or from funds collected as liquidation taxes.

Acts 1971, 62nd Leg., p. 526, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.307. APPEAL. If any claimant is not satisfied with the judgment of the commissioners court, he may appeal the judgment in the manner that cases are appealed from the justice court.

Acts 1971, 62nd Leg., p. 526, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.308. REJECTION OF CLAIM. (a) If the trustee finds any claim unjust either in whole or in part, he shall endorse on the claim his refusal to allow it.

(b) If the whole claim is refused, the claimant may bring suit to collect the claim against the trustee in a court of competent jurisdiction in the county, and if the claim is judged valid by the court, the judgment shall be filed with the trustee and paid in its order as other claims.

(c) If the claim is refused only in part and the claimant waives his claim to the part refused, he shall file the claim in the commissioners court for approval, but if the claimant does not waive his claim to the part refused, he shall withdraw his claim from the trustee and may bring suit as provided in Subsection (b) of this section.

Acts 1971, 62nd Leg., p. 526, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.309. BONDS AND APPROVED CLAIMS. Bonds and approved claims which were outstanding debts of the district before its dissolution are valid and subsisting claims against the district without further approval under this subchapter, but they are subject to contest according to the provisions of this subchapter.

Acts 1971, 62nd Leg., p. 527, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.310. CONTESTING CLAIM. (a) If any district taxpayer files with the trustee a protest against any claim which was allowed by the former drainage commissioners before the district was dissolved and which was unpaid at the time the district was dissolved, the trustee shall refuse to pay the claim. The protest shall be accompanied by a bond in double the amount of the claim with sufficient sureties to be approved by the trustee and payable to the trustee, conditioned on payment by the contestant of all costs of suit if the claimant establishes his claim.

(b) After the trustee rejects the claim, the claimant may bring suit against the trustee to recover the claim as in other suits of a civil nature, and the contestant and his bondsman shall be parties to the suit. The trustee shall make all defenses urged against the claim by the contestant. If the claimant recovers, judgment shall be rendered against the contestant and his bondsman for costs incurred in the suit, and the claimant shall file the judgment with the trustee who shall pay the claim as other claims are paid under this

subchapter.

Acts 1971, 62nd Leg., p. 527, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 56.311. FINAL REPORT OF TRUSTEE. (a) When all claims against the district are paid and all costs and expenses incurred in controlling and managing the district are satisfied, the trustee shall file with the commissioners court his account for final settlement.

(b) The trustee's account shall include a complete statement of all money received and paid out, of all property controlled and disposed of by the trustee, and of all other matters relating to management of the district's affairs.

(c) On approval of the account, the commissioners court shall direct the trustee to turn over to persons entitled to it as found by the commissioners court all money and property remaining in the control of the trustee, and on compliance with this order, the trustee shall report to the commissioners court, and the commissioners court shall enter an order discharging the trustee and his bondsman and closing the trust estate.

(d) Before entering an order discharging the trustee and the surety on the trustee's bond and closing the trust estate, the commissioners court shall order all transactions of the trustee audited by an independent certified public accountant. A copy of the audit shall be filed with the commissioners court and the Texas Natural Resource Conservation Commission, and a copy shall be provided to the trustee.

Acts 1971, 62nd Leg., p. 527, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 17, eff. Sept. 1, 2001.

SUBCHAPTER J. ALTERNATE PROCEDURE FOR ANNEXATION BY EXISTING DISTRICT

Sec. 56.751. PETITION FOR ANNEXATION. The landowners of a defined area of territory not included in a district may file with the secretary of the board a petition requesting an election on the inclusion of the territory in a district. The petition must:

(1) be signed by registered voters residing in the territory equal in number to at least five percent of the number of

votes received in the territory to be included by all candidates in the most recent gubernatorial general election; and

(2) describe by metes and bounds the territory to be included in the district.

Added by Acts 1995, 74th Leg., ch. 958, Sec. 2, eff. June 16, 1995.

Sec. 56.752. HEARING ON DETERMINATION OF PETITION. (a) The board shall hear the petition to determine if the petition meets the requirements of Section 56.751.

(b) The board by order shall set the time and place of the hearing on the petition. The hearing shall be held not less than 30 days after the date of the order.

Added by Acts 1995, 74th Leg., ch. 958, Sec. 2, eff. June 16, 1995.

Sec. 56.753. NOTICE OF HEARING. (a) The secretary of the board shall issue notice of the time and place of the hearing. The notice must describe the territory proposed to be annexed.

(b) The secretary shall post copies of the notice in three public places in the district and one copy in a public place in the territory proposed to be annexed. The notices must be posted for at least 15 days before the day of the hearing.

(c) The notice must be published one time in a newspaper with general circulation in the county. The notice must be published at least 15 days before the day of the hearing.

Added by Acts 1995, 74th Leg., ch. 958, Sec. 2, eff. June 16, 1995.

Sec. 56.754. ELECTIONS TO APPROVE ANNEXATION OF TERRITORY. (a) If the board determines the petition meets the requirements of Section 56.751, the board shall order elections to approve the annexation.

(b) Annexation of the territory must be approved by a majority vote of the voters at a separate election held in the district and by a majority vote of the voters at a separate election held in the territory proposed to be added.

(c) If the district has outstanding debts or taxes, the

election to approve annexation also determines whether the territory to be added assumes its proportion of the debts or taxes if the territory is added to the district.

Added by Acts 1995, 74th Leg., ch. 958, Sec. 2, eff. June 16, 1995.

Sec. 56.755. NOTICE AND PROCEDURE OF ELECTION. The notice of the election, the manner and the time of giving the notice, the manner of holding the election, and qualifications of the voters are governed by Subchapter E, Chapter 58.

Added by Acts 1995, 74th Leg., ch. 958, Sec. 2, eff. June 16, 1995.

Sec. 56.756. LIABILITY OF ADDED TERRITORY. The added territory shall bear its pro rata part of all indebtedness or taxes that may be owed, contracted, or authorized by the district to which it is added.

Added by Acts 1995, 74th Leg., ch. 958, Sec. 2, eff. June 16, 1995.

SUBCHAPTER K. CONSOLIDATION OF DISTRICTS

Sec. 56.801. CONSOLIDATION OF DISTRICTS. Two or more districts governed by this chapter may consolidate into one district as provided by this subchapter.

Amended by Acts 1999, 76th Leg., ch. 222, Sec. 12, eff. Sept. 1, 1999.

Sec. 56.802. CONSOLIDATION BY AGREEMENT. (a) The boards of the districts proposed to be consolidated may initiate consolidation.

(b) The board of each district proposed to be consolidated must agree on the terms and conditions of consolidation. The consolidation agreement may include adoption of a name for the consolidated district and designation of election precincts for the consolidated district. After the boards have agreed to the terms and conditions of consolidation, the boards jointly shall order an election to be held in each district to determine whether the districts should be consolidated.

Amended by Acts 1999, 76th Leg., ch. 222, Sec. 12, eff. Sept. 1, 1999.

Sec. 56.803. CONSOLIDATION BY PETITION. (a) Consolidation may be initiated by a petition requesting that the districts be consolidated.

(b) The petition must be signed by a number of qualified voters in each district proposed to be consolidated that is equal to at least five percent of the number of votes cast in the district in the most recent gubernatorial general election. There must be one petition for each district proposed to be consolidated. A qualified voter may sign only the petition for the district in which the voter resides.

(c) The petitions shall be filed simultaneously with the secretary of each district proposed to be consolidated.

(d) A district's board shall determine whether the petition presented to that district meets the requirements of Subsection (b) and shall notify the board of each other district proposed to be consolidated whether the petition meets the requirements of Subsection (b).

(e) If the petitions meet the requirements of Subsection (b) in all districts proposed to be consolidated, the boards of the districts proposed to be consolidated shall:

(1) issue a joint order for an election to be held on the same day in each district to determine whether the districts should be consolidated; and

(2) give notice of the election in the manner provided by law for other elections.

Added by Acts 1999, 76th Leg., ch. 222, Sec. 12, eff. Sept. 1, 1999.

Sec. 56.804. TIME OF HOLDING ELECTION; COST OF ELECTION. (a) The election shall be held on a uniform election day in May.

(b) The election date selected must provide sufficient time for the preparation of the necessary voter registration lists for each district.

(c) Each district proposed to be consolidated is responsible for holding the election in that district and for the cost of the

election in that district.

Added by Acts 1999, 76th Leg., ch. 222, Sec. 12, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 340, Sec. 6, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 471 (H.B. 57), Sec. 6, eff. October 1, 2005.

Sec. 56.805. BALLOT. The ballot in the election shall be printed to permit voting for or against the proposition: "Consolidation of _____ (names of districts to be consolidated) into a single drainage district."

Added by Acts 1999, 76th Leg., ch. 222, Sec. 12, eff. Sept. 1, 1999.

Sec. 56.806. CANVASS; RESULT. (a) The board of each district proposed to be consolidated shall canvass the returns of the election held in that district. The board of each district shall publish the results for that district.

(b) If the majority of votes cast in each district favor the consolidation, the districts become one district and are governed as one district.

(c) If the proposition does not carry, another election for consolidation may not be held in any district that was proposed to be consolidated for at least two years after the results of the election are declared.

Added by Acts 1999, 76th Leg., ch. 222, Sec. 12, eff. Sept. 1, 1999.

Sec. 56.807. GOVERNING CONSOLIDATED DISTRICTS; ELECTION OF DIRECTORS. (a) When two or more districts are consolidated, they become one district and are governed as one district.

(b) Until the directors of the consolidated district are elected and qualify, the directors of each district shall continue to act jointly as directors of the consolidated district. A vacancy on the joint boards occurring before the permanent directors of the consolidated district are elected may not be filled unless the number of members on the joint board is three or fewer. If the number of

members on the joint board is reduced to three or fewer, the consolidated district shall be governed by three directors. If there are fewer than three directors, vacancies shall be filled in the same manner as vacancies on elected boards until there are three directors.

(c) The joint board shall immediately order an election of directors of the consolidated district to be held on the next available uniform election date as provided for election of directors under Chapter 49.

(d) The consolidation agreement may provide that the directors of the original districts continue to act jointly as directors of the consolidated district until the next election. The agreement may name persons to serve as directors of the consolidated district until the next election if all directors of the original districts agree to resign.

(e) The joint board of the consolidated district shall approve the bond of each new director.

(f) If any of the consolidated districts were operating under Section 59, Article XVI, Texas Constitution, at the time the districts were consolidated, the consolidated district shall operate under Section 59, Article XVI, Texas Constitution, and limitations imposed by Section 52, Article III, Texas Constitution, and this chapter on debts to be incurred and taxes to be levied do not apply to that district unless, not later than the 60th day after the districts are consolidated, the board of directors of the consolidated district adopts a resolution that the consolidated district shall operate under Section 52, Article III, Texas Constitution.

Added by Acts 1999, 76th Leg., ch. 222, Sec. 12, eff. Sept. 1, 1999.

Sec. 56.808. TITLE TO PROPERTY; ASSUMPTION OF DEBT. (a) Title to all property of the consolidating districts vests in the consolidated district. The consolidated district assumes and is liable for the outstanding indebtedness of the consolidating districts.

(b) All enforceable contract rights held or owned by a consolidating district are owned and held by the consolidated district. The consolidated district is liable for contractual

obligations of a consolidating district.

Added by Acts 1999, 76th Leg., ch. 222, Sec. 12, eff. Sept. 1, 1999.

Sec. 56.809. UNEXPENDED BOND PROCEEDS. Any money received from the sale of bonds by a consolidating district that has not been spent before the date of consolidation may be spent by the consolidated district only on the project for which the bonds were issued.

Added by Acts 1999, 76th Leg., ch. 222, Sec. 12, eff. Sept. 1, 1999.

Sec. 56.810. FISCAL YEAR; BUDGET. (a) A consolidated district shall adopt a fiscal year. The fiscal year may be provided for in the consolidation agreement or adopted by the board of the consolidated district after the consolidation election.

(b) The fiscal year of each district that has been consolidated ends on the last day of the month in which the consolidation election was held. Audits of each district that was consolidated shall be prepared up to and through the last day of the month in which the consolidation election was held. The first audit of the consolidated district shall be for the period beginning on the first day of the month after the consolidation election and ending on the last day of the fiscal year adopted for the consolidated district.

(c) A budget shall be adopted for the period beginning on the first day of the month after the consolidation election and continuing through the end of the fiscal year adopted for the consolidated district.

Added by Acts 1999, 76th Leg., ch. 222, Sec. 12, eff. Sept. 1, 1999.

CHAPTER 57. LEVEE IMPROVEMENT DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 57.001. DEFINITIONS. In this chapter:

(1) "District" means levee improvement district.

(2) "Board" means the board of directors of a levee improvement district.

(3) "Water commission" means the Texas Natural Resource Conservation Commission.

(4) "Commissioners court" means the commissioners court of the county in which the district is located or the commissioners court of the county of jurisdiction.

(5) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(6) "Commission" means the Texas Natural Resource Conservation Commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 982, ch. 367, Sec. 30, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.147, 1.155, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.079, eff. Aug. 12, 1991.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 57.011. CREATION. A levee improvement district may be created in the manner prescribed by this chapter under Article XVI, Section 59, of the Texas Constitution.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.012. PETITION. (a) Before a district is created, a petition must be presented to the commissioners court or to the county judge of the county if the commissioners court is not in session.

(b) The petition, signed by the owners of a majority of the acreage of the proposed district, shall:

(1) describe the proposed boundaries of the district;

(2) state the general nature of the proposed improvements and their necessity and feasibility;

(3) state whether the taxes proposed to be levied in the district are to be levied on the ad valorem basis or on the benefit basis; and

(4) designate a name for the district which shall include the name of the county in which the district is located.

(c) If the proposed district is composed of land in two or more counties, the petition must designate one of the counties in which any part of the district is to be located as the county of jurisdiction, and this county has jurisdiction over all matters

concerning the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.013. DEPOSIT. (a) A petition for creation of a district shall be accompanied by a deposit of $50, and if the district is to be composed of more than one county, the deposit shall be $75.

(b) The deposit shall be paid to the clerk of the commissioners court and the clerk shall use the deposit to pay all expenses incident to the hearing on the petition. The clerk shall pay the expenses with vouchers approved by the county judge.

(c) If any of the deposit is left after the expenses are paid, the clerk shall return the excess to the petitioners or their attorney.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.014. HEARING ON PETITION. The commissioners court or the county judge to which the petition is presented shall fix a time and place for the hearing on the petition before the commissioners court. The hearing must be held during the period beginning with the 15th day and ending with the 30th day after the date of the order.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.015. NOTICE OF HEARING. (a) The commissioners court shall order the county clerk to issue notice informing all persons concerned of the time and place of the hearing, and of their right to appear at the hearing to contend for or contest the creation of the district, and the county clerk shall deliver the notice to any adult person who is willing to post it.

(b) The notice shall be posted at the courthouse door and at a place inside the proposed district. If the district is located in more than one county, the person posting the notice shall post a copy at the courthouse door in each county in which any portion of the proposed district is located and at a place inside the boundaries of that portion of the district located in each county. The notice

shall be posted for at least 10 days before the date of the hearing.

(c) Any person who posts the notice shall make an affidavit before some officer authorized by law to administer oaths that he posted the notices. The affidavit is conclusive of the sworn facts.

(d) The order of the commissioners court shall direct the county clerk to mail notice of the hearing to the executive director in Austin, Texas. The notice shall state that the petition has been filed and shall include a statement of the petition's general purpose and the time and the place of the hearing.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 982, ch. 367, Sec. 31, eff. June 10, 1981; Acts 2003, 78th Leg., ch. 248, Sec. 34, eff. June 18, 2003.

Sec. 57.016. INVESTIGATION BY EXECUTIVE DIRECTOR. (a) When the executive director receives the notice provided for in Section 57.015(d), he shall examine the proposed district, and do the work required to determine the necessity, feasibility, and probable costs of reclaiming the land of the district from overflow and of draining it properly. The executive director shall also determine the costs of organizing the district and maintaining it for two years.

(b) A representative of the executive director shall attend the hearing on the petition to create the district and file a written report with the commissioners court on matters which have been investigated. The executive director shall furnish the commissioners court any additional information that is required.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981.

Sec. 57.017. HEARING PROCEDURE. (a) The commissioners court has exclusive jurisdiction to determine all issues with respect to the creation of the district and all issues involved in proceedings with respect to the district after it has been created.

(b) The commissioners court may adjourn the hearing from day to day and from time to time.

(c) The commissioners court may make all incidental orders

deemed proper with respect to the matters before it.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.018. CONDUCT OF HEARING. At the hearing, the commissioners court shall hear the petition and all issues with respect to the creation of the proposed district. Any person interested, or his attorney, may appear and contend for or contest the creation of the district and offer testimony pertinent to any issue presented.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.019. FINDINGS AND JUDGMENT. (a) Before the commissioners court determines that the district should be created, it must find:

(1) that the petition is signed by the owners of a majority of the acreage in the proposed district;

(2) that notice of the hearing was given;

(3) that the proposed improvements are desirable, feasible, and practicable; and

(4) that the proposed improvements would be a public utility and a public benefit and would be conducive to public health.

(b) If the commissioners court determines that the district should be created, it shall render a judgment which recites its findings and establishes the district.

(c) The commissioners court shall include its findings and judgment in an order which shall be recorded in the minutes of the commissioners court. The order shall define the boundaries of the district, but it does not have to include all of the land described in the petition if at the hearing a modification or change in the district is found to be necessary.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.020. APPEAL OF DISMISSAL OF PETITION. If at the hearing on the petition the commissioners court enters an order dismissing the petition, the petitioners or any one of them or any

taxpayer in the district may appeal the order to the district court of the county.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.021. NOTICE OF APPEAL. (a) Notice of the appeal shall be given by announcement at the time the order of the commissioners court is recorded or by written notice within the two-day period immediately following the entry of the order.

(b) If the notice is announced at the time the order is entered, the notice shall be entered in the minutes of the commissioners court.

(c) Written notice given under this section shall include a simple statement that the undersigned is appealing the order of the commissioners court and shall be filed with the county clerk.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.022. APPEAL BOND. Within five days from the date the order is recorded, the appellant must file an appeal bond with two or more good and sufficient sureties, payable to the county judge, approved by the county clerk, and conditioned upon the due prosecution of the appeal and payment of all costs incident to the appeal. No extension of time will be granted for filing the appeal bond.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.023. TIME FOR APPEAL. Unless the appeal is perfected according to Sections 57.021-57.022 of this code within five days after the order is rendered, the order shall be final and conclusive.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.024. TRANSFER OF RECORDS AND ORDERS. Within five days after the appeal bond is filed, the county clerk must transfer to the clerk of the district court all the records filed with the

commissioners court which relate to the establishment of the district and a transcript of the orders of the commissioners court. No additional pleadings are required.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.025. TRIAL OF APPEAL AND JUDGMENT. (a) The district court shall set the appeal for a hearing. The appeal shall be tried de novo.

(b) The judgment of the district court shall be final and conclusive, and the decision shall be certified to the commissioners court for its further action.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 2646, ch. 707, Sec. 4(45), eff. Aug. 31, 1981.

Sec. 57.026. AUTHORIZING DISTRICTS TO OPERATE UNDER THIS CHAPTER. (a) Districts that are organized under the laws of this state for the purpose of reclaiming lands through a system of levees and drainage and that are not governed by the provisions of laws of this state are entitled to and may exercise all the rights, powers, and privileges conferred by this chapter on districts created under it. They are also entitled to exercise all of the enlarged powers which may be conferred under Article XVI, Section 59, of the Texas Constitution.

(b) Before a district may operate under the provisions of this chapter, the owners of a majority of the acreage of the district must present to the commissioners court of the county in which the district is located a petition requesting that a hearing be ordered to determine whether or not the district may avail itself of the provisions of this chapter.

(c) The commissioners court shall fix a time and place for the hearing, and give notice according to the provisions of Section 57.015 of this code.

(d) At the hearing the commissioners court shall hear evidence for and against the issue presented by the petition. If it finds that the interests of the district would be promoted by granting the petition, it shall enter a judgment in the record, declaring that:

(1) it is in the interest of the district to avail itself of all rights, powers, and privileges conferred by this chapter on district created under it;

(2) the district on behalf of which the petition is filed is entitled to and may exercise all rights, powers, and privileges conferred by this chapter on districts created by it; and

(3) the district may exercise all the rights, powers, and privileges as if it were created under this chapter, and shall proceed as if it were created under this chapter.

(e) The decree of the commissioners court shall not in any way injuriously affect any financial liability of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 57.051. APPOINTMENT OF BOARD OF DIRECTORS. (a) The commissioners court which creates a levee improvement district under this chapter, by majority vote, shall appoint three directors for the district.

(b) In a district with a population of 2,000 or more the commissioners court may increase the total number of directors to five. The additional members appointed under this section must be registered voters in the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 804 (H.B. 2202), Sec. 1, eff. September 1, 2019.

Sec. 57.053. TERM OF OFFICE, REMOVAL, AND SUCCESSION. (a) A vacancy on the board shall be filled by majority vote of the commissioners court, and the court shall appoint directors so that the board will always have full membership.

(b) The commissioners court, by majority vote, may remove an appointed member of the board.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1995, 74th Leg., ch. 715, Sec. 28, eff. Sept. 1, 1995.

Sec. 57.057. ELECTION OF BOARD OF DIRECTORS. After creation of a district, an election may be held to determine whether or not directors for the district will be elected rather than appointed.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1977, 65th Leg., p. 1248, ch. 483, Sec. 5a, eff. Aug. 29, 1977.

Sec. 57.058. NUMBER OF ELECTED DIRECTORS; TERMS. In districts which have elected boards, there shall be five directors on the board. The initial elected directors shall draw lots to determine which two initial directors serve two-year terms and which three initial directors serve four-year terms. In countywide districts, one director shall be elected by the electors of the entire district and one director elected from each county commissioners precinct by the electors of that precinct. In other districts, all five directors shall be elected from precincts within the district to be established by the commissioners court.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1977, 65th Leg., p. 1248, ch. 483, Sec. 5b, eff. Aug. 29, 1977.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 804 (H.B. 2202), Sec. 2, eff. September 1, 2019.

Sec. 57.059. QUALIFICATIONS FOR ELECTED DIRECTORS. To be qualified for election as a director, a person must be a qualified property taxpaying elector of the precinct and county from which he is elected and be eligible under the constitution and laws of this state to hold the office to which he is elected.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.060. PETITION. Before an election is held under Section 57.057, a petition, signed by the greater of at least 10

percent of the total number of electors or 100 electors in the district who are qualified to vote, shall be presented to the district requesting that an election be held in the district to determine whether or not directors for the district should be elected. If the results of an election held under Section 57.057 determine that directors will be elected, the current directors continue to serve until the elected directors qualify to take office.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1977, 65th Leg., p. 1249, ch. 483, Sec. 5c, eff. Aug. 29, 1977; Acts 1995, 74th Leg., ch. 715, Sec. 29, eff. Sept. 1, 1995.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 804 (H.B. 2202), Sec. 3, eff. September 1, 2019.

Sec. 57.061. PROCEDURE FOR ELECTION. After the petition is presented under Section 57.060, the board shall order an election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1977, 65th Leg., p. 1249, ch. 483, Sec. 5d, eff. Aug. 29, 1977; Acts 1995, 74th Leg., ch. 715, Sec. 30, eff. Sept. 1, 1995.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 57.091. PURPOSES OF DISTRICT. A district may be created for the following purposes:

(1) to construct and maintain levees and other improvements on, along, and contiguous to rivers, creeks, and streams;

(2) to reclaim lands from overflow from these streams;

(3) to control and distribute the waters of rivers and streams by straightening and otherwise improving them; and

(4) to provide for the proper drainage and other improvement of the reclaimed land.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.092. GENERAL POWERS OF DISTRICT. (a) The district may

enter into all necessary and proper contracts and employ all persons and means necessary to purchase, acquire, build, construct, complete, carry out, maintain, protect, and, in case of necessity, add to and rebuild all works and improvements necessary or proper to fully accomplish the purposes of the district, including the reclamation of land within the district.

(b) The powers granted in this section are subject to the supervision and direction of the commission or other authority created by law.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1977, 65th Leg., p. 1247, ch. 483, Sec. 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 983, ch. 367, Sec. 32, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.148, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 1423, Sec. 33, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 248, Sec. 35, eff. June 18, 2003.

Sec. 57.093. ADOPTING RULES AND REGULATIONS. A district may adopt and enforce reasonable rules and regulations to:

(1) preserve the sanitary condition of all water controlled by the district;

(2) prevent waste or the unauthorized use of water controlled by the district;

(3) regulate privileges on any land or any easement owned or controlled by the district;

(4) regulate the design and construction of improvements and facilities that outfall, connect, or tie into district improvements and facilities; or

(5) require the district's review and approval of drainage plans for property within the district.

Added by Acts 2001, 77th Leg., ch. 1423, Sec. 34, eff. June 17, 2001.

Sec. 57.100. CONSTRUCTION OF LEVEES. (a) The district may construct the necessary levees, bridges, and other improvements across or under

(1) railroad embankments, tracks, or rights-of-way;

(2) public or private roads or the rights-of-way for the roads; or

(3) levees, other public improvements, and rights-of-way of other districts.

(b) A district may join its improvements to improvements in another district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.101. CONSTRUCTION OF LEVEES BY RAILROAD COMPANIES AND OTHER AUTHORITIES. (a) Before the district may construct a levee, bridge, or other improvement across or under any railroad improvement or right-of-way, any road, or any improvement of another district, the board must notify the proper railroad authorities, or other authorities of the additions or changes to result from the improvements planned by the district.

(b) The railroad authorities, or other authorities shall have 30 days from the day they receive the notice to agree or not to agree to do the work at their own expense to construct the improvements in their own manner.

(c) If a railroad or other authority undertakes to construct an improvement for the district, the design or manner of construction must be satisfactory to the district and must be approved by the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 983, ch. 367, Sec. 34, eff. June 10, 1981.

Sec. 57.103. INJURING LEVEES. A person who wrongfully or purposely cuts, injures, destroys, or in any manner impairs the usefulness of a levee or other reclamation improvement, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 nor more than $1,000 or by confinement in the county jail for not more than one year or by both.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.104. CONSTRUCTION OF IMPROVEMENTS. The district may construct all improvements necessary or convenient to accomplish the

purposes of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 2003, 78th Leg., ch. 248, Sec. 36, eff. June 18, 2003.

Sec. 57.108. CONDITIONS OF CONTRACT. (a) Repealed by Acts 2003, 78th Leg., ch. 248, Sec. 57.

(b) Contracts may be awarded or entered in sections for the purpose of the purchase, acquisition, construction, and improvement of pumping equipment, reservoirs, culverts, bridges, and drainage improvements as these may become necessary.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1977, 65th Leg., p. 1247, ch. 483, Sec. 2, eff. Aug. 29, 1977; Acts 2003, 78th Leg., ch. 248, Sec. 37, 57(1), eff. June 18, 2003.

Sec. 57.111. CONDITIONING CONTRACT ON SALE OF BONDS. After the approval and registration of bonds by the proper state officials as provided in this chapter, the board may award contracts conditioned on the sale of bonds in an amount equal to the contract price.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.116. ENGINEER'S CONSTRUCTION REPORT. (a) As work progresses on the district's improvements, the engineer shall make a report to the board, showing in detail whether or not the contract is being fulfilled.

(b) When the work is completed, the engineer shall make a detailed report to the board, showing whether or not the contract has been completely fulfilled, and if not, in what particular it has not been fulfilled.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 38, 39, eff. June 18, 2003.

Sec. 57.117. INSPECTION AND REPORT BY EXECUTIVE DIRECTOR. (a) The executive director shall inspect the construction of a levee or other improvement once every 60 days after the construction work has commenced, and if he finds that the work has been done in strict accordance with the contract, the executive director shall certify this fact, and his certificate shall give a full description of the work done up to the date of inspection.

(b) If the executive director finds that the work has not been done in strict accordance with the contract, he shall officially certify this fact, and in the certificate he shall state where the contractor has failed to comply with the contract.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 2003, 78th Leg., ch. 248, Sec. 40, eff. June 18, 2003.

Sec. 57.118. COMPLIANCE WITH CONTRACT. After the board receives a report that the contractor has failed to comply with the contract, it shall demand that the contractor comply with the requirements of the contract at his own expense, and no further accounts, claims, or vouchers submitted by the contractor shall be approved or paid until the contractor complies with the requirements of the executive director by constructing the improvement in accordance with the contract.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 2003, 78th Leg., ch. 248, Sec. 41, eff. June 18, 2003.

Sec. 57.121. INTERPRETATION OF DISTRICT POWERS. Except as expressly provided, specific powers authorized by this chapter may not operate as a limitation on the general powers authorized by this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER E. ENGINEER'S REPORT

Sec. 57.151. AUTHORITY OF ENGINEER. The engineer, subject to the authority of the commission, shall control the engineering work of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.149, eff. Sept. 1, 1985.

Sec. 57.154. SURVEY AND REPORT. (a) The engineer shall make a survey of the land inside the boundaries of the district, and land surrounding the district, that will be improved or reclaimed by the system of levees and drainage to be adopted and shall prepare for the board a written report, with maps and profiles, of the results of his survey.

(b) Repealed by Acts 2003, 78th Leg., ch. 248, Sec. 57.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 983, ch. 367, Sec. 35, eff. June 10, 1981; Acts 2003, 78th Leg., ch. 248, Sec. 57(1), eff. June 18, 2003.

Sec. 57.155. CONTENTS OF REPORT. (a) The engineer's report shall contain a complete plan for draining land, constructing levees on land, and reclaiming land of the district from overflow or damage by waters from streams inside or adjacent to the district which may affect land in the district. The report shall also include a description of the physical characteristics of the land within the district and the location of any public roads, railroads, rights-of-way and roadways, and other improvements on the land of the district.

(b) The plan may include, and where necessary must include, the costs of straightening streams which may injure the land of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER F. GENERAL FISCAL PROVISIONS

Sec. 57.177. FINANCING THE DISTRICT WITHOUT BONDS. (a) If the district wants to carry out its purposes without issuing bonds, the board may arrange for contributions from landowners or other sources to provide the funds required to complete the improvements.

(b) The electors of the district may vote to create an indebtedness which is not evidenced by bonds.

(c) If the district creates an indebtedness under this section, the indebtedness may not be more than:

(1) the cost of construction of the improvements included in the engineer's report;

(2) the cost of maintaining the improvements for two years; and

(3) an additional amount equal to 10 percent to meet emergencies, modifications, and changes lawfully made, plus damages awarded against the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 983, ch. 367, Sec. 36, eff. June 10, 1981; Acts 2003, 78th Leg., ch. 248, Sec. 43, eff. June 18, 2003.

SUBCHAPTER G. ISSUANCE OF BONDS

Sec. 57.201. POWER TO ISSUE BONDS. The district may issue bonds, but it may not issue bonds nor incur any debt unless an election is held in the district and the proposition is approved by a majority vote of the electors of the district who vote in the election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.207. DECLARING RESULT OF ELECTION. The board shall enter an order declaring the election result in its minutes.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 31, eff. Sept. 1, 1995.

Sec. 57.208. ISSUANCE OF BONDS. (a) If the issuance of bonds and the levy of taxes to pay for the bonds are approved by the electors of the district, the board may order the issuance of the bonds in one or more installments as the board may deem necessary from time to time up to the amount approved at the election.

(b) The bonds shall be known as "Levee Improvement Bonds".

(c) The bonds shall be:

(1) issued in the name of the district;

(2) signed by the chairman of the board; and

(3) attested by the secretary of the board with the seal of the district affixed to the bonds.

(d) The board shall fix the denominations, terms and conditions of the bonds and make them payable at an expedient time not more than 30 years from the date on the bonds.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1977, 65th Leg., p. 1249, ch. 483, Sec. 7, eff. Aug. 29, 1977; Acts 2003, 78th Leg., ch. 248, Sec. 44, eff. June 18, 2003.

Sec. 57.212. BOND RECORD. (a) After the bonds are issued, the board shall deliver a well-bound book to the county treasurer of the county of jurisdiction, who shall keep in the book a record of:

(1) all bonds which have been issued;

(2) the number of each bond;

(3) the amount of each bond;

(4) the rate of interest on each bond;

(5) the date of issuance of each bond;

(6) the date when each bond is due;

(7) the place where each bond is payable;

(8) the amount received for each bond; and

(9) the tax levy to provide a sinking fund to pay principal of and interest on the bonds.

(b) The treasurer shall keep the book open at all times for inspection by any taxpayer or bondholder, and when a person pays for a bond, the treasurer shall enter the payment in the book.

(c) The county treasurer is entitled to receive for his services in keeping a record of the bonds the same fee allowed by law to the county clerk for recording deeds.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.213. REFUNDING BONDS. (a) With the consent of the bondholders, a district may refund outstanding bonds by issuing new coupon bonds in their place.

(b) Interest is shown by coupons attached to the bonds, and the commissioners court of jurisdiction shall determine whether the board will pay the interest on the bonds annually or semiannually.

(c) The board may pay the refunding bonds serially or in any other manner they choose, but, except as provided in Subsection (d) of this section, they shall pay the bonds not later than 40 years from the date the bonds are issued.

(d) A district that taxes on the benefit basis and that is located in a county with a population of over 1.3 million may refund outstanding bonds or matured interest coupons on bonds issued by the district with new coupon bonds payable not more than 75 years from their date.

(e) The district shall issue the bonds in denominations of $100 or a multiple of $100 and, before the bonds are delivered, shall levy a tax sufficient to pay the principal of and interest on the refunding bonds. The refunding of bonds does not affect any taxes already due.

(f) The board shall issue refunding bonds in the manner provided for other district bonds.

(g) The board shall deduct any money on hand in the sinking fund account to ascertain the amount of refunding bonds to be issued and shall apply the money to the payment of the outstanding bonds.

(h) The board may not issue refunding bonds until they are approved by the attorney general and registered by the comptroller, and the comptroller shall not register the refunding bonds until the old bonds being replaced are presented to him for cancellation. After the comptroller registers the new bonds, he shall cancel the old bonds and interest coupons and deliver the new bonds to the proper bondholders. The old bonds may be presented for cancellation in installments, and the comptroller may register and deliver a like amount of the new bonds.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1981, 67th Leg., p. 598, ch. 237, Sec. 140, eff.

Sept. 1, 1981; Acts 2001, 77th Leg., ch. 669, Sec. 148, eff. Sept. 1, 2001.

Sec. 57.2131. ALTERNATIVE METHODS OF ISSUING REFUNDING BONDS. (a) A district may issue refunding bonds as provided for in this section, notwithstanding Section 57.213 of this code.

(b) A district may issue bonds to refund all or any part of its outstanding bonds, notes, or other obligations including matured but unpaid interest.

(c) Refunding bonds shall mature serially or otherwise not more than 40 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of the state.

(d) Refunding bonds may be made payable from the same source as the bonds, notes, or other obligations being refunded or from other additional source or sources.

(e) The refunding bonds must be approved by the attorney general in the manner provided by law for other bonds of the district and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(f) The orders or resolutions authorizing the issuance of the refunding bonds may provide that the refunding bonds will be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount which, when added to the earnings and profits from the investment of such amount, is sufficient to pay the interest on and principal of the bonds being refunded to their maturity dates, or to their option dates if the bonds have been duly called for payment prior to maturity according to their terms, shall be deposited in the place or places at which the bonds being refunded are payable.

(g) If the district issues refunding bonds in accordance with Subsection (f) of this section, the comptroller shall register refunding bonds without the surrender and cancellation of bonds being refunded.

(h) A refunding may be accomplished in one or in several installment deliveries.

(i) Refunding bonds are investment securities under Chapter 8, Business & Commerce Code.

(j) In lieu of the methods provided in this section and in Section 51.213 of this code, a district may refund bonds, notes, or other obligations as provided by the general law of the state.

Added by Acts 1985, 69th Leg., ch. 471, Sec. 1, eff. June 11, 1985.

Sec. 57.214. ISSUANCE OF REFUNDING BONDS WITHOUT AN ELECTION. A district which is converted under Article XVI, Section 59, of the Texas Constitution, may issue refunding bonds without the approval of the electors under the provisions of Section 56.210 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.215. INVESTMENT OF SINKING FUND. The board or commissioners court of jurisdiction may invest the district's sinking funds in county, municipal, district, or other bonds in which other sinking funds may by law be invested and also may invest the sinking funds in bonds of the series to which the funds apply if the bonds are offered for redemption before maturity on terms considered advantageous to the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.216. PROVIDING FOR ADDITIONAL FUNDS. (a) If the improvements in the engineer's report are insufficient to reclaim all of the land and other property inside the district, extensive repairs or additions to the improvements are necessary, or additional funds are needed to complete improvements, the board may provide additional funds for the district by following the provisions of this chapter for raising funds.

(b) If the board creates additional indebtedness or issues additional bonds, the indebtedness or bonds are subject to the provisions of this chapter relating to the issuance of bonds.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 984, ch. 367, Sec. 38, eff. June 10, 1981; Acts 2003, 78th Leg., ch. 248, Sec. 45, eff. June 18, 2003.

Sec. 57.217. ELIGIBILITY OF DISTRICT BONDS FOR INVESTMENTS AND PUBLIC FUNDS. A district's bonds, when certified and approved by the attorney general and registered by the comptroller as herein provided, shall be legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, and trustees and for all interest and sinking funds and other public funds of the State of Texas and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. A district's bonds shall be eligible and lawful security for all deposits of public funds of the State of Texas and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons attached to them.

Added by Acts 1977, 65th Leg., p. 1250, ch. 483, Sec. 9, eff. Aug. 29, 1977.

SUBCHAPTER H. TAX PROVISIONS

Sec. 57.251. LEVY OF TAXES ON THE AD VALOREM BASIS. (a) If a district levies taxes on the ad valorem basis, it shall levy and have assessed and collected taxes on all taxable property in the district.

(b) The taxes must be sufficient to pay the interest on the bonds as it is due, and to raise a sufficient amount to create a sinking fund to redeem and discharge the bonds at maturity.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1977, 65th Leg., p. 1251, ch. 483, Sec. 10, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 57.258. ASSESSMENT AND COLLECTION OF TAXES FOR DISTRICTS WITH LAND IN MORE THAN ONE COUNTY. (a) A district providing for the

levy of taxes on the ad valorem basis which includes land located in more than one county has all the rights, powers, and privileges of districts that include land in one county.

(b) The assessor and collector of each county having land included in the district shall assess the taxes levied by the commissioners court of his county against the land in his county which is included in the district for each year that a tax is levied.

(c), (d) Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, Sec. 6(a)(3), eff. Jan. 1, 1982.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2330, ch. 841, Sec. 6(a)(3), eff. Jan. 1, 1982.

Sec. 57.259. ASSESSMENT OF DAMAGES. (a) In a district which levies taxes on the ad valorem basis, the commissioners of appraisement shall be appointed and shall act in the manner provided in Sections 57.261-57.270 of this code, except that persons appointed under this section may not assess benefits.

(b) Proceedings, notice, and hearings shall be governed by the provisions of this chapter relating to assessment of taxes on the benefit basis.

(c) Provisions of this chapter relating to assessment of damages in districts levying taxes on the benefit basis shall apply to assessment of taxes on the ad valorem basis.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.260. LEVY OF TAXES ON BENEFIT BASIS. (a) If a district levies taxes on the benefit basis, the commissioners court of each county in which any portion of that district is located shall levy and have assessed and collected taxes on all taxable property inside the district, based on the net benefits which the commissioners of appraisement find will accrue to each piece of property from the improvements described in the engineer's report or other authorized improvements.

(b) The taxes shall be sufficient to pay the interest on the bonds, as it is due, and to raise an amount to create a sinking fund sufficient to discharge and redeem the bonds at maturity.

(c) The levy for each year throughout the life of the bond issue may be made at the time the bonds are issued and shall be the rate of levy for each year until it is modified.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 46, eff. June 18, 2003.

Sec. 57.261. APPOINTMENT OF COMMISSIONERS OF APPRAISEMENT. The commissioners court of the county of jurisdiction in a district levying taxes on the benefit basis shall appoint three disinterested commissioners, known as "commissioners of appraisement."

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 47, eff. June 18, 2003.

Sec. 57.262. QUALIFICATIONS FOR COMMISSIONERS OF APPRAISEMENT. The commissioners of appraisement shall be freeholders, but not owners of land within the district for which they are to act, and shall not be related within the fourth degree of affinity or consanguinity, as determined under Chapter 573, Government Code, to any of the members of the commissioners court of jurisdiction, the board, or to any landowners in the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 55, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Sec. 57.263. COMPENSATION OF COMMISSIONERS OF APPRAISEMENT. (a) The commissioners of appraisement in their report shall show the number of days each has been employed and the actual expenses each has incurred during his service as commissioner.

(b) The district shall pay each commissioner of appraisement $5 a day for his services and reimburse him for all necessary expenses when his accounts are approved by the board.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.264. ORGANIZATION OF COMMISSIONERS OF APPRAISEMENT. (a) The secretary of the board shall notify each of the commissioners of appraisement in writing of his appointment and of the time and place for the first meeting.

(b) The commissioners of appraisement shall meet at the time and place specified, or as soon after that time as practicable, at a time and place agreed on by them.

(c) The commissioners of appraisement shall each take and subscribe an oath to faithfully and impartially discharge their duties as commissioners, and to make a true report of the work done by them.

(d) At the first meeting the commissioners of appraisement shall organize by electing one of their number chairman and one vice chairman. The secretary of the board or in his absence, a person the board appoints, shall be secretary of the commissioners of appraisement during their continuance in office.

(e) The secretary shall furnish the commissioners of appraisement information and assist them in the performance of their duties.

(f) If a commissioner of appraisement resigns, the vacancy shall be filled in the manner provided for filling vacancies on the board.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.265. DUTIES OF COMMISSIONERS OF APPRAISEMENT. (a) The commissioners of appraisement shall begin to perform their duties within 30 days after qualifying and organizing.

(b) The commissioners of appraisement may at any time call on the attorney of the district for legal advice and information and, if necessary, may require the engineer or one of his assistants to assist in the proper performance of their duties.

(c) The commissioners of appraisement shall view:

(1) the land inside the district;

(2) other land which will be affected by the engineer's report if carried out;

(3) all public roads, railroads, rights-of-way, and other property or improvements located on the land; and

(4) land inside or outside the district which may be acquired under the provisions of this chapter for any purpose connected with or incident to carrying out the engineer's report.

(d) The commissioners of appraisement shall assess the amounts of benefits and all damages that will accrue to any tract of land inside the district or any land outside the district which may be affected by the engineer's report, or any public highway, railroad, right-of-way, roadway, or other property.

(e) The commissioners of appraisement shall assess the value of all land inside or outside the district to be acquired for right-of-way or other purposes.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 48, eff. June 18, 2003.

Sec. 57.266. REPORT OF COMMISSIONERS OF APPRAISEMENT. (a) The commissioners of appraisement shall prepare a report of their findings. The report shall include:

(1) the name of the owner of each piece of property examined and assessed;

(2) a description which will identify each piece of property; and

(3) the value of all property to be taken or acquired for rights-of-way or any other purposes connected with carrying out the engineer's report.

(b) At least a majority of the commissioners of appraisement shall sign the report. They shall file the report with the secretary of the board.

(c) The failure of the commissioners of appraisement to return damages to any tract of land inside or outside the district shall be considered a finding that no damage will be done to that tract.

(d) The commissioners of appraisement in their report shall fix a time and place to hear objections to the findings in the report. The date for the hearing shall not be less than 20 days from the filing of the report.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Amended by Acts 1981, 67th Leg., p. 984, ch. 367, Sec. 39, eff. June 10, 1981; Acts 2003, 78th Leg., ch. 248, Sec. 49, eff. June 18, 2003.

Sec. 57.267. NOTICE OF HEARING. (a) After the commissioners of appraisement file their report with the secretary of the board, the secretary shall publish notice of the time and place of the hearing on the report.

(b) The notice shall be published in a newspaper published in each county in which any part of the district is located, or in which any land lies that will be in any way affected by the proposed engineer's report. The notice shall be published once a week for two consecutive weeks before the date of the hearing.

(c) The notice shall be in substantially the following form:

To the owners and all other persons having any interest in land lying in ___ County, take notice, that a copy of the engineer's report of the ___ Levee Improvement District has been filed in the district's office and that the commissioners of appraisement have been appointed to assess benefits and damages accruing to land or other property inside or outside the levee improvement district which will be benefited, taken, damaged, or affected in some way by the carrying out of the engineer's report. The report of the commissioners of appraisement has been filed in my office at ___, and all interested persons may examine the report and make an objection to all or any part of the report. A person who claims damage to his land and to whose land no damages have been assessed in the report must file a claim for damage in my office on or before ___, ___. A person who fails to make an objection or to file a claim for damages is deemed to have waived his right to object or claim damages. The commissioners of appraisement will meet on ___, ___, to hear and act on objections to their report and claims for damages.

_____

Secretary, Board of Directors

_____ Levee Improvement District

(d) The secretary shall mail written notice to each person whose property is listed in the report of the commissioners of appraisement, if the office address is known. This notice shall state in substance:

(1) that the report of the commissioners of appraisement

assessing benefits and damages accruing to land and other property because of the engineer's report for the district has been filed in the district's office;

(2) that all persons interested may examine the report and make objections to it in whole or in part; and

(3) that the commissioners of appraisement will meet on the day and at the place named to hear and act on objections to the report.

(e) The secretary, on the day of the hearing, shall file in his office the original notice, with his affidavit, which shall show the manner of publication and the names of all persons to whom notices have been mailed. The affidavit shall state that the secretary could not with reasonable diligence ascertain the post-office addresses of those affected to whom no notices were mailed.

(f) The secretary shall file copies of the notice and his affidavit with the commissioners of appraisement and with the clerk of the commissioners court of jurisdiction.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 50, eff. June 18, 2003.

Sec. 57.268. RIGHTS OF PARTIES. Parties interested in matters before the commissioners of appraisement may appear in person or by attorney, or both, and are entitled to process for witnesses, to be issued by the chairman of the commissioners of appraisement on demand. The commissioners of appraisement have the same power as a court of record to enforce the attendance of witnesses.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.269. HEARING; JUDGMENT. (a) An owner of land or other property affected by the report of the commissioners of appraisement or by the engineer's report may file an objection to any or all parts of the report of the commissioners of appraisement at or before the hearing on the report.

(b) A person on whose land no damages have been assessed and who believes that his land will be damaged by prosecution of the engineer's report may file with the secretary of the board a claim

for damages.

(c) The commissioners of appraisement, at the time and place named in the notice, shall hear and decide all objections and claims for damages and may make changes and modifications in the report.

(d) The commissioners of appraisement may adjourn the hearing from day to day.

(e) After modifying the report to conform to the changes decided on at the hearing, the commissioners of appraisement shall make a decree confirming the report as modified.

(f) If necessary the commissioners shall condemn and adjudge damages for land inside or outside the district that is needed for right-of-way or other purposes.

(g) The commissioners shall adjudge and apportion costs incurred on the hearing in an equitable manner.

(h) The findings of the commissioners of appraisement as to benefits is final and conclusive.

(i) The secretary shall record the findings of benefits in the minutes of the board and shall file certified copies of the findings with the county clerk of each county in which any portion of the land inside the district is located. The filing is notice to all persons of the contents of the decree.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 72, eff. Sept. 1, 1989; Acts 2003, 78th Leg., ch. 248, Sec. 51, eff. June 18, 2003.

Sec. 57.270. APPEAL OF DECREE OF THE COMMISSIONERS OF APPRAISEMENT. (a) A person or the board may appeal from the decree of the commissioners of appraisement assessing or refusing to assess damages or fixing the value of a right-of-way.

(b) The only questions considered on an appeal are:

(1) whether or not just compensation has been allowed for property taken;

(2) whether or not proper damages have been allowed for property injured; or

(3) whether or not in fact property has been damaged.

(c) The appeal shall be taken to the district court of the county of jurisdiction in the manner, under the conditions, and within the time provided by Sections 57.020-57.025 of this code for

appeals from judgments of the commissioners court refusing to create the district.

(d) The district court has jurisdiction of the appeal regardless of the amount claimed.

(e) The secretary in not less than five days after the appeal is filed shall send to the district clerk:

(1) the engineer's report or a certified copy of it;

(2) a transcript of that part of the commissioners of appraisement's report affecting the lands concerned in the appeal;

(3) a transcript of the claim for damages; and

(4) a transcript of the action of the commissioners of appraisement on the claim.

(f) Appeals may be consolidated in the district court.

(g) The trial in the district court shall be de novo, and the proceedings shall be in accordance with the laws of this state for damage suits.

(h) The claimant is considered the plaintiff, and the district, the defendant, and no further pleadings are required.

(i) Appeals may be taken from the judgment of the district court as in other civil cases.

(j) No appeal may delay carrying out the engineer's report, and if the board pays to the district clerk the amount of damages awarded by the commissioners of appraisement to a claimant who is appealing their decree, and if the board makes bond to pay to the claimant any additional amount that he may be awarded on his appeal, title to the condemned property that is the subject of the appeal vests in the district, and the district is entitled to immediate possession.

(k) No person may claim damages against the district, its board, officers, or agents because of the prosecution of the engineer's report if he owns or has an interest in land in a county in which notice has been published of the hearing before the commissioners of appraisement, and he has failed to file a claim for damages or an objection to the damages assessed by the commissioners of appraisement against his land, or if he has filed a claim or objection but has failed to appeal from an adverse ruling on his claim or objection.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 52, eff. June 18, 2003.

Sec. 57.271. BASIS OF TAXATION. (a) After the action of the commissioners of appraisement, as provided in Sections 57.261-57.270 of this code, their final findings, judgment and decree assessing benefits, until changed or modified, shall form the basis of taxation for the district, for all purposes for which taxes may be levied by the district.

(b) Taxes shall be apportioned and levied on each tract of land, railroad, and other real property in the district in proportion to the benefits to the property named in the decree of the commissioners of appraisement.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.272. TAX ASSESSOR FOR DISTRICTS LEVYING TAXES ON BENEFIT BASIS. (a) The secretary of the board shall serve as tax assessor for a district levying taxes on the benefit basis.

(b) When a tax is levied, the secretary shall, at the expense of the district, prepare a tax roll substantially in the same form as the assessment roll made by county assessor and collector, except the roll shall state net benefits assessed against property.

(c) The secretary shall compute the amount of taxes assessed against each piece of property and enter the amount on the tax roll and shall file with the assessor and collector of each county in which a portion of the district is located a certified copy of the part of the tax roll which relates to property in the district located in that county.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.273. READJUSTING ASSESSMENTS. (a) After one year from the date of the final judgment and decree of the commissioners of appraisement the owners of a majority of the acreage in the district may file a petition with the commissioners court alleging that the previous assessment of benefits in the judgment and decree is insufficient or inequitable and requesting an increase or readjustment of the assessment of benefits for the purpose of making an adequate or more equitable basis for levying taxes.

(b) If the engineer's report is changed or modified, or if extensive repairs or additions to the engineer's report are desired, the board shall file a petition with the commissioners court describing the changes, modifications, repairs, or additions.

(c) When a petition is filed, the commissioners court shall set a day for a hearing on the petition.

(d) The commissioners court shall issue notice informing all persons concerned of the time and place of the hearing, and of their rights to appear and contend for or contest a reassessment of benefits. The notice must be posted as provided in Section 57.015 of this code for posting notice of the hearing for establishing the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 53, eff. June 18, 2003.

Sec. 57.274. HEARING ON PETITION FOR REASSESSMENT. (a) At the hearing on readjustment of assessments, the commissioners court shall hear the petition and receive evidence for or against the petition.

(b) The commissioners court shall order a reassessment of benefits if it finds that the aggregate amount of assessed benefits as shown by the previous final judgment and decree is insufficient to carry out the original engineer's report or changes, repairs, or additions to the report or there has been a material change in the relative value of the benefits conferred on the property in the district, or for some reason the assessment of benefits is inadequate or inequitable.

(c) If the commissioners court orders a reassessment, it shall appoint commissioners of appraisement as provided in Section 57.263 of this code, and the new commissioners of appraisement have the same powers, rights, privileges, and duties as provided in Section 57.267 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 54, eff. June 18, 2003.

Sec. 57.275. TAX COLLECTION ON REASSESSMENT. (a) The judgment

and decree of the commissioners of appraisement reassessing benefits in the district are the basis of the assessment of taxes in the district.

(b) The assessment can again be modified or changed but there can be no reassessment of benefits that will in any way render any outstanding bonds or other indebtedness of the district insecure. The sum of benefits as reassessed may never be less than the sum of all outstanding bonds and other indebtedness of the district.

(c) The commissioners court of each county in which the district is located shall levy and have assessed and collected taxes based on the reassessment, at a rate sufficient to provide funds to pay the interest on all outstanding bonds and other indebtedness of the district, to pay the bonds or other indebtedness at maturity, and to provide the necessary sinking funds to pay all bonds or other indebtedness that may be issued.

(d) If the engineer's report is modified, or if extensive repairs or additions are made, the provisions of this section apply to districts that levy taxes on the ad valorem basis, but the commissioners of appraisement shall assess only the damages which will accrue to the property inside or outside the district as a result of the changes in the report.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 55, eff. June 18, 2003.

Sec. 57.279. COLLECTION OF DELINQUENT TAXES. (a) Taxes levied on the benefit basis under this chapter are a first and prior lien on all property against which they are assessed and are payable, mature, and become delinquent as provided in the Property Tax Code for ad valorem taxes.

(b) The Property Tax Code governs the collection of delinquent taxes levied on the benefit basis and the sale of property for the payment of the taxes.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

SUBCHAPTER I. DISSOLUTION

Sec. 57.321. DISSOLUTION OF A DISTRICT. Subject to the provisions of Sections 50.251-50.256 of this Code, if the commissioners court finds at any time before the sale of a district's bonds or final lending of its credit in another form that the proposed undertaking for any reason is impracticable or apparently cannot be successfully accomplished, the commissioners court may dissolve the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.322. REQUIREMENTS FOR DISSOLVING A DISTRICT BY PETITION. (a) To dissolve a district, a petition signed by the owners of a majority of the acreage in the district requesting the commissioners court to dissolve the district and stating the reasons for dissolution must be presented.

(b) At the time the petition is filed, a $50 deposit shall be made to pay for the expenses of a hearing on the petition.

(c) The petition shall be set for a hearing, notice shall be given, the hearing held, and the expense deducted from the deposit in the manner provided in this chapter for creation of the district.

(d) The commissioners court has the same powers over dissolution of a district that it has over creation of a district.

(e) If at the hearing the commissioners court finds that the district should be dissolved, it shall render a judgment reciting its findings and enter an order on its records declaring the district dissolved.

(f) The commissioners court shall appoint the chairman of the board or some other suitable person as trustee to close the affairs of the district without delay, and shall determine the length of the term and the amount of compensation for the trustee.

(g) If the commissioners court finds that the district should not be dissolved, it shall dismiss the petition at the cost of the petitioners and enter its findings on record.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 872 (H.B. 2825), Sec. 2, eff. September 1, 2017.

Sec. 57.323. RETURN OF TAXES ON DISSOLUTION. (a) If a district is dissolved, the commissioners court shall order returned to the taxpayers ratably any unspent taxes that have been levied and collected in the name of the district in anticipation of an issue of bonds.

(b) Before the taxes are returned, the compensation due the assessor and collector and the treasurer and any other claim properly charged against the taxes must be deducted from them.

(c) The treasurer shall receive and file proper receipts for all sums refunded.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.324. DISSOLVING A DISTRICT BY ELECTION. A district may dissolve its corporate existence by election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.325. PETITION. To dissolve a district by election, a person shall present a petition, signed by the owners of a majority of the acreage in the district, to the commissioners court at a regular session, requesting the commissioners court to dissolve the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.326. ELECTION ORDER. (a) After it receives a petition under Section 57.325 of this code, the commissioners court shall order an election to be held in the district at the earliest possible legal time to determine whether or not the district should be dissolved.

(b) If the proposition to dissolve the district fails to carry at the election, the commissioners court may not order another election for the same purpose within one year after the result of the election has been announced officially.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.327. ELECTION PROCEDURE, TIME, AND PLACE FOR HOLDING ELECTION. The provisions of Sections 57.203-57.207 of this code apply, so far as possible, to a dissolution election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.328. BALLOT. The commissioners court shall have the ballots printed to provide for voting for or against the following proposition and no other: "Dissolving the levee improvement district."

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.329. VOTE NECESSARY TO CARRY PROPOSITION. More than two-thirds of the persons voting in the election must vote to dissolve the district to carry the proposition.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.3295. DISSOLUTION OF DISTRICT BY COMMISSIONERS COURT WITHOUT PETITION. (a) The commissioners court of a county that contains a portion of the Trinity River may dissolve a district at any time if the court finds the following:

(1) the district has been dormant for more than five years;

(2) the physical boundaries of the district cannot be determined;

(3) the board of directors of the district is not active, or cannot be determined;

(4) property owners of the district cannot be determined; or

(5) a levee partially or completely inside the boundaries of the district has received a rating of unacceptable from the United States Army Corps of Engineers and the district has not undertaken, attempted to undertake, or made plans to undertake reasonable efforts to address the concerns of the United States Army Corps of Engineers.

(b) The commissioners court shall hold a public hearing before voting on a dissolution order. The hearing must be held not later than the seventh day before the date the dissolution order is subject

to a vote by the commissioners court.

(c) Notice of the public hearing must be published in a regularly circulated newspaper within the county not later than the seventh day before the date the public hearing is scheduled to occur.

(d) If the commissioners court votes to dissolve the district, the commissioners court shall appoint the chairman of the board or some other suitable person as trustee to close the affairs of the district without delay, and shall determine the length of the term and the amount of compensation for the trustee.

(e) A district may not be dissolved under this section if the district:

(1) has any outstanding bonds or other indebtedness until that indebtedness has been repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds; or

(2) has a contractual obligation to pay money until that obligation has been paid fully in accordance with the contract.

(f) This section applies only to a commissioners court of a county that:

(1) has a population of not less than 2.2 million and that is adjacent to a county with a population of not less than 1.8 million;

(2) has a population of not more than 200,000 and that contains a portion of Joe Pool Lake;

(3) has a population of not less than 47,000 and that contains a portion of the Richland Chambers Reservoir; or

(4) has a population of not less than 100,000 and that contains a portion of the Cedar Creek Reservoir.

Added by Acts 2017, 85th Leg., R.S., Ch. 872 (H.B. 2825), Sec. 1, eff. September 1, 2017.

Sec. 57.330. COMMISSIONERS COURT ORDER DISSOLVING DISTRICT. (a) If the proposition to dissolve the district carries, the commissioners court shall make an order substantially as follows: " (Name of petitioner) and (number of other petitioners) others presented a petition asking for an election to decide whether or not (name of county) County Levee Improvement District (district number) should be dissolved. The commissioners court held the election on (date), and more than two-thirds of the resident property taxpayers

voting in the election voted to dissolve the district. As a consequence of the election result, (name of county) County Levee Improvement District (district number) is dissolved."

(b) The commissioners court shall enter the order in its minutes.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.331. DISSOLUTION TRUSTEES. The commissioners court shall appoint as trustees, three landowners of the district, and the three appointed landowners assume the duties of trustees at the time they file the bond required under Section 57.332 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.332. TRUSTEES' BOND. (a) When the commissioners court issues the dissolution order under Section 57.330 of this code, the trustees shall execute jointly a good and sufficient bond in an amount sufficient to cover the amount of the outstanding bonds and other debts of the district, payable to and approved by the county judge, conditioned on the trustees faithfully performing their duties as trustees and paying money and delivering other property of the district over which they have control to the persons entitled to the money or other property.

(b) When the bond is executed, it shall be recorded in the minutes of the commissioners court. When the bond is approved, it supersedes the bond the treasurer executed under Section 57.065 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.333. TRUSTEES' COMPENSATION. (a) The trustees are entitled to receive for their services as trustees a one-half of one percent commission on all money they receive for the district and a one-half of one percent commission on all money they pay out as trustees. This commission is the entire compensation for all three trustees.

(b) The trustees are not entitled to a commission on money in

the treasury when they become the trustees or on money in the treasury when their trusteeship ends.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.334. APPOINTMENT OF TRUSTEE TO FILL VACANCY. In case of death or resignation of a trustee, the commissioners court shall appoint a successor to fill the vacancy.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.335. GENERAL DUTIES OF TRUSTEES. (a) The trustees have control of the disposition and sale of all district property.

(b) The trustees have control of all the property of the district, including the money in the treasury, and shall keep the district's money and all its books, notes, accounts, and choses in action of every kind.

(c) The trustees may sue to recover property and collect debts of the district, and may employ counsel in suits and in caring for the district's property and managing the district's dissolution.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.336. TRUSTEES' EXPENSE. (a) The trustees shall make a charge against the trust estate for each reasonable expense incurred by them in conducting the business of the district and in litigating a suit for the district.

(b) The trustees shall charge any unpaid counsel fees or court costs incurred by former district officers against the trust estate.

(c) The trustees shall present the charges against the trust estate to the commissioners court and shall post notice in the manner provided for other claims against the district.

(d) If the commissioners court approves a charge against the trust estate, the charge becomes a valid, preferred claim against the district.

(e) The trustees, acting as treasurer, may retain money in their control to pay for a valid claim which they have against the district.

(f) If the commissioners court rejects a part of an expense which the trustees think is a valid claim, the trustees may appeal the decision as other claimants.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.337. CLAIMS THAT WERE APPROVED BEFORE DISTRICT WAS DISSOLVED. The trustees shall pay all unpaid bonds and claims outstanding against the district before the commissioners court issues the dissolution order except those which are protested according to the provisions of Section 57.338 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.338. PROTESTING PAYMENT OF CLAIMS APPROVED BEFORE DISTRICT WAS DISSOLVED. (a) If a person who pays taxes in the district protests the payment of a claim filed under Section 57.337 of this code, the trustees shall refuse to pay the claim.

(b) The protest is sufficient to cause the trustees to disallow the claim if the person making the protest files the protest with the trustees, along with a bond for twice the amount of the claim, signed by sufficient sureties approved by the trustees, payable to the trustees, and conditioned on the protesting taxer's paying all costs of suit if the claimant establishes his claim in full.

(c) A person whose claim is disallowed under this section may sue the trustees for the amount he claims.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.339. CLAIMS NOT APPROVED BEFORE DISTRICT WAS DISSOLVED. (a) A person who has a claim or judgment against the district which was not approved by the commissioners before the district was dissolved may collect on the claim only by following the procedure prescribed in this section and Sections 57.340-57.342 of this code.

(b) The person must present the claim, duly verified, to the trustees within six months after the day the commissioners court approves the bond of the trustees.

(c) The trustees shall examine the claim, and if the trustees

find that the claim is correct, they shall allow it. If the trustees allow the claim, the person making the claim must file it with the county clerk not less than 20 days before the beginning of the regular session of the commissioners court that follows the date the trustees allowed the claim.

(d) If the trustees find that it would be unjust for them to allow a claim, they shall endorse on the claim their refusal to allow it, and the person making the claim may sue the trustees for the amount he claims in any court of competent jurisdiction in the county.

(e) If the trustees find that it would be unjust for them to allow part of the claim, they shall endorse on the claim the parts of it they allow and the parts they disallow. The person making the claim may either waive his claim to the part disallowed and file the claim with the commissioners court or refuse to waive his claim to the part disallowed, withdraw the claim from the trustees, and sue the trustees for the amount he claims.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.340. CLAIMS, PAYMENT ORDERS, AND APPEALS. (a) The commissioners court, in a regular session, shall pass on claims. The commissioners court shall approve each claim it finds to be correct and shall issue an order stating that approval and shall enter the order in its minutes.

(b) When the order of approval is entered in the minutes, the claim becomes a valid claim against the district.

(c) If the commissioners court approves a claim under this section, the person making the claim shall file the claim with the trustees.

(d) If the person making the claim is not satisfied with the terms of the order of approval or if the commissioners court refuses to approve the claim, the person may appeal the decision of the commissioners court.

(e) When a claim is filed under Section 57.339 of this code, the county clerk shall immediately issue notice of the filing to all persons interested in the district. The notice shall be posted in three public places in the district and at the courthouse door not less than 20 days before the next regular session of the

commissioners court.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.341. CLAIMS JUDGMENTS. (a) If a person making a claim sues the trustees for the amount of the claim and wins a judgment against the trustees, the person shall file the judgment with the trustees.

(b) If the suit contests a claim under Section 57.338 of this code, the contestant and his sureties shall be made parties to the suit, and the trustees shall assert all defenses urged against the claim in the protest. If the claimant wins a judgment for the whole amount of his claim, the court shall render a judgment against the contestant and his sureties for all costs incurred in the suit.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.342. CLAIMS TO BE PAID. The trustees shall pay from money left in the district's treasury on dissolution claims filed with them under Sections 57.336, 57.337, and 57.339 of this code, in the order that the claims are filed.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.343. DISPOSITION OF DEBTS AFTER ELECTION. (a) If the district is dissolved, the commissioners court shall provide for the settlement of the debts of the district, including the costs and expenses of holding the election.

(b) The commissioners court may levy, assess, and collect a sufficient tax on the property in the district in the manner provided in this chapter, to pay all the valid debts and obligations of the district, except bonds issued and held by a purchaser.

(c) The district shall pay bonds that have been issued and are held by a purchaser according to the terms of the bonds by levy and collection of an annual tax as provided in this chapter unless retirement of the bonds is effected as provided in Section 57.344 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.344. ACCELERATED RETIREMENT OF BONDS. (a) If there are any district bonds outstanding at the time the commissioners court issues the dissolution order, the commissioners court shall immediately begin negotiations with the holders of the bonds to determine whether or not the retirement of the bonds can be accelerated.

(b) If the bonds can be retired at an earlier date than the date stipulated on their face, either as a result of the terms of the bonds or because of an agreement between the commissioners court and the holders of the bonds, then the commissioners court may levy a tax to pay off the bonds as quickly as possible.

(c) The commissioners court shall have the tax assessed and collected annually or at one time.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 57.346. FINAL TRUSTEE REPORT. (a) After the trustees pay all valid claims established against the district and satisfy the cost and expenses of controlling and managing the district, they shall file a report of the final settlement with the commissioners court.

(b) The trustees shall include in the report:

(1) a full and complete account of all money received and paid during their trusteeship;

(2) an account of the disposition of all property which came under their control as trustees; and

(3) an account of all other matters relating to the management of the affairs of the district.

(c) On the approval of the report, the commissioners court shall direct the trustees to turn over any property or money remaining in their control to the person designated by the commissioners court to receive the money or property.

(d) When the trustees have complied with the direction of the commissioners court, they shall report their compliance to the commissioners court. After the trustees have reported their compliance, the commissioners court shall discharge the trustees and

their sureties and close the trust estate.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

CHAPTER 58. IRRIGATION DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 58.001. DEFINITIONS. In this chapter:

(1) "District" means an irrigation district.

(2) "Board" means the board of directors of a district.

(3) "Director" means a member of the board of directors of a district.

(4) "Commissioners court" means the commissioners court of the county in which a district or part of a district is located.

(5) "Commission" means the Texas Natural Resource Conservation Commission.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 984, ch. 367, Sec. 40, eff. June 10, 1981; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.080, eff. Aug. 12, 1991.

SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION OF DISTRICT

Sec. 58.011. CREATION OF DISTRICT. An irrigation district may be created under and subject to the authority, conditions, and restrictions of either Article III, Section 52, of the Texas Constitution, or Article XVI, Section 59, of the Texas Constitution.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.012. COMPOSITION OF DISTRICT. (a) A district may include all or part of one or more counties, including any town, village, or municipal corporation, and may include any other political subdivision of the state or any defined district, providing the land contained therein is agricultural in character.

(b) The areas composing a district do not have to be contiguous but may consist of separate bodies of land separated by land not included in the district; however, each segregated area, before it

may be included in the district, must cast a majority vote in favor of the creation of the district.

(c) No district may include territory located in more than one county except by a majority vote of the electors residing within the territory in each county sought to be included in the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.013. PETITION. (a) A petition requesting creation of a district shall be signed by a majority of the persons who hold title to land in the proposed district which represents a total value of more than 50 percent of the value of all the land in the proposed district as indicated by the county tax rolls. If there are more than 50 persons holding title to land in the proposed district, the petition is sufficient if signed by 50 of them.

(b) The petition may be signed and filed in two or more copies.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.014. CONTENTS OF PETITION. The petition shall include:

(1) the name of the district;

(2) the area and boundaries of the district;

(3) the provision of the Texas Constitution under which the district is to be organized;

(4) the purpose or purposes of the district;

(5) a statement of the general nature of the work to be done and the necessity and feasibility of the project, with reasonable detail and definiteness to assist the court or commission passing on the petition in understanding the purpose, utility, feasibility, and need; and

(6) a statement of the estimated cost of the project based on the information available to the person filing the petition at the time of filing.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.015. PLACE OF FILING; RECORDING. (a) The petition shall be filed in the office of the county clerk of the county in which the district is located. If land in more than one county is included in the district, copies of the petition certified by the clerk shall be filed in the office of the county clerk of each county in which a portion of the district is located.

(b) The petition shall be recorded in a book kept for that purpose in the office of the county clerk.

(c) If more than one petition is filed and the petitions are identical except for the signature, one copy of the petition shall be recorded and all signatures on the other petitions shall be included.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.016. BOARD OR COMMISSION TO CONSIDER CREATION OF DISTRICT. If the land to be included in a district is within one county, the creation of the district shall be considered and ordered by the commissioners court, but if the land to be included in a district is in two or more counties, the creation of the district shall be considered and ordered by the commission.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.017. SINGLE-COUNTY DISTRICT; HEARING. (a) If a petition is filed for the creation of a district within one county, the county judge shall issue an order setting the date of hearing on the petition by the commissioners court and shall endorse the order on the petition or on a paper attached to the petition.

(b) After the order is issued, the county clerk shall issue notice of the hearing.

(c) The petition may be considered at a regular or special session of the court.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.018. SINGLE-COUNTY DISTRICT; NOTICE OF HEARING. (a) The notice of hearing on the petition shall include a statement of the nature and purpose of the district and the date, time, and place of hearing.

(b) The notice shall be prepared with one original and three copies. The county clerk shall retain one copy of the notice in his files and deliver the original and two copies to the county sheriff.

(c) The sheriff shall post one copy of the notice at the courthouse door 15 days before the day of the hearing and shall publish one copy in a newspaper of general circulation in the county once a week for two consecutive weeks. The first newspaper publication shall be made at least 20 days before the day of the hearing.

(d) Before the hearing, the sheriff shall make due return of service of the notice with copy and affidavit of publication attached to the original.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.019. SINGLE-COUNTY DISTRICT; NAME. (a) A district located in one county may be named the _____ County Irrigation District Number _____ (insert the name of the county and proper consecutive number).

(b) A district may be known and designated by any term descriptive of the location of the district and descriptive of the principal powers to be exercised by the district; however, the word "district" shall be included in the designation and a consecutive number shall be assigned to it if other districts of the same name have been created in the county.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.020. SINGLE-COUNTY DISTRICT; TESTIMONY AT HEARING. (a) At the hearing on the petition, any person whose land is included in or would be affected by the creation of the district may appear and contest the creation of the district and may offer testimony to show that the district:

(1) is or is not necessary;

(2) would or would not be a public utility or benefit to land in the district; and

(3) would or would not be feasible or practicable.

(b) The hearing may be adjourned from day to day.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.021. SINGLE-COUNTY DISTRICT; GRANTING OR REFUSING PETITION. (a) The commissioners court or the commission shall grant the petition requesting the creation of a district if it appears at the hearing that:

(1) organization of the district as requested is feasible and practicable;

(2) the land to be included and the residents of the proposed district will be benefited by the creation of the district;

(3) there is a public necessity or need for the district; and

(4) the creation of the district would further the public welfare.

(b) If the commissioners court or the commission fails to make the findings required by Subsection (a) of this section, it shall refuse to grant the petition.

(c) If the commissioners court or the commission finds that any of the land sought to be included in the proposed district will not be benefited by inclusion in the district, it may exclude that land not to be benefited and shall redefine the boundaries of the proposed district to include only the land that will receive benefits from the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.022. SINGLE-COUNTY DISTRICT; APPEAL FROM ORDER OF COMMISSIONERS COURT. (a) If the commissioners court grants or refuses to grant the petition, any person who signed the petition or any person who appears and protests the petition and offers testimony against the creation of the district may appeal from the order of the

court by giving notice of appeal in open court at the time of the entry of the order, which shall be entered on the court's docket, and by filing with the clerk of the commissioners court within five days a good and sufficient appeal bond in the amount of $2,500.

(b) The appeal bond shall be approved by the clerk of the commissioners court payable to the county judge conditioned for the prosecution of the appeal with effect and the payment of all costs incurred with the appeal in the event the final decree of the court is against the appellant.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.023. SINGLE-COUNTY DISTRICT: RECORD ON APPEAL; NOTICE OF APPEAL. (a) On completion of an appeal as provided in Section 58.022 of this code, the clerk of the commissioners court shall, within 10 days, prepare a certified transcript of all orders entered by the commissioners court and transmit them with all original documents, processes, and returns on processes to the clerk of the district court to which the appeal is taken.

(b) All persons shall be charged with notice of the appeal without notice or service of notice. No person who fails to appear by petition, in person, or by attorney in the commissioners court may be permitted to intervene in the district court trial.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.024. SINGLE-COUNTY DISTRICT: HEARING IN DISTRICT COURT; PROCEDURE. (a) The district court, either in term time or in vacation time, shall schedule the appeal for hearing with all reasonable dispatch.

(b) In the proceeding in the district court, formal pleadings shall not be required but, with the court's permission, may be filed.

(c) The trial and decision shall be by the court without the intervention of a jury, and the hearing shall be conducted as though the jurisdiction of the district court were original jurisdiction.

(d) The following matters may be contested in the district court:

(1) all matters that were or might have been presented in the commissioners court;

(2) the validity of the Act under which the district is proposed to be created; and

(3) the regularity of all previous proceedings.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2646, ch. 707, Sec. 4(47), eff. Aug. 31, 1981.

Sec. 58.025. SINGLE-COUNTY DISTRICT: JUDGMENT OF DISTRICT COURT; APPEAL. (a) In the appeal, the district court shall apply to the determination its full powers to the end that substantial justice may be done.

(b) An appeal from the judgment of the district court may be taken as in other civil causes, but appeals filed under Section 58.022 of this code shall be given precedence on the docket of any higher court over all causes that are not of similar public concern.

(c) The final judgment of the district court, or other court to which an appeal may be prosecuted, shall be certified and transmitted to the clerk of the commissioners court with all original documents and processes which were transmitted from the commissioners court to the district court on appeal.

(d) The commissioners court shall enter its order on the petition to conform to the decree entered by the court of final jurisdiction and shall enter other and further orders as may be required by law to execute the intent of the certified decree.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.026. SINGLE-COUNTY DISTRICT: APPOINTMENT OF DIRECTORS; BOND. (a) If the commissioners court grants a petition for creation of a district, it shall appoint five directors who shall serve until their successors are elected or appointed in accordance with law.

(b) Each director shall, within 15 days after appointment, file his official bond in the office of the county clerk, and the county clerk shall present the bond to the county judge for approval. The county judge shall pass on the bond and approve it, if it is proper

and sufficient, or disapprove it and shall endorse his action on the bond and return it to the county clerk.

(c) If approved, the bond of a director shall be recorded in a record kept for that purpose in the office of the county clerk, but if a bond is not approved, a new bond may be furnished within 10 days after disapproval.

(d) If any director appointed under this section fails to qualify, the commissioners court shall appoint another person to replace him.

(e) Each director appointed under this section shall take the oath of office as provided by Section 58.077 of this code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.027. MULTICOUNTY DISTRICT: CONSIDERATION BY COMMISSION. (a) The commission shall have exclusive jurisdiction and power to consider and determine all petitions for creation of a district that will include land or property located in two or more counties.

(b) The orders of the commission concerning the organization of a district shall be final, unless an appeal is taken from the orders as provided in this subchapter.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 36, eff. Sept. 1, 1997.

Sec. 58.028. MULTICOUNTY DISTRICT: NOTICE AND HEARING ON DISTRICT CREATION. When a petition is filed, the commission shall give notice of an application in the manner provided in Section 49.011 and may conduct a hearing on the application if the commission determines that a hearing is necessary under that section.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 37, eff. Sept. 1, 1997.

Sec. 58.030. MULTICOUNTY DISTRICT: CONSIDERATION BY COMMISSION; PROCEDURE. (a) The commission shall consider and determine on the issues a petition filed under Section 58.028.

(b) The commission shall be governed by the provisions of Section 58.021.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 38, eff. Sept. 1, 1997.

Sec. 58.031. MULTICOUNTY DISTRICT: APPEAL FROM COMMISSION DECISION. (a) When the commission grants or refuses a petition, any person who comes within the requirements specified in Sections 58.020-58.025 of this code may prosecute an appeal from the judgment of the commission under Sections 58.022-58.025 of this code.

(b) The appeal may be taken to any district court in any county in which part of the proposed district is located or to a district court in Travis County.

(c) The time within which an appeal bond may be approved and filed is 15 days after the entry of the final order by the commission.

(d) On the perfection of the appeal, the appellant shall pay the actual cost of the transcript of the record, which will be assessed as part of the costs incurred on the appeal.

(e) Whenever practicable, the original documents and processes with the returns attached shall be sent to the district court.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.032. MULTICOUNTY DISTRICT: APPOINTMENT OF DIRECTORS BY COMMISSION; BOND. (a) If the commission grants the petition for creation of the district, it shall appoint five directors, who shall serve until their successors are elected or appointed.

(b) A certified copy of the order of the commission granting a petition and naming the directors shall be filed in the office of the county clerk of each county in which a portion of the district is located.

(c) Each director named in the order shall, within 15 days

after appointment, file his official bond in the office of the county clerk of the county of his residence. The county clerk shall present the bond to the county judge for approval.

(d) The county judge shall act on each bond in the manner provided in Section 58.026 of this code.

(e) If any director appointed under this section fails to qualify, the commissioners court of the county in which he lives shall appoint some qualified person to replace him.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.035. INCLUSION OF CITY, TOWN, OR MUNICIPAL CORPORATION IN DISTRICT. (a) No city, town, or municipal corporation may be included within any district created under this chapter unless the proposition for the creation of the district has been adopted by a majority of the electors in the city, town, or municipal corporation.

(b) Any municipal corporation included within a district shall be a separate voting district, and the ballots cast within the municipal corporation shall be counted and canvassed separately from the remainder of the district.

(c) No district that includes a city, town, or municipal corporation may include land outside of the municipal corporation unless the election to confirm and ratify the creation of the district favors the creation of the district independent of the vote within the municipal corporation.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.036. CONFIRMATION ELECTION IN DISTRICT INCLUDING LAND IN MORE THAN ONE COUNTY. No district, the major portion of which is located in one county, may be organized to include land in another county unless the election held in the other county to confirm and ratify the creation of the district is adopted by those voting in the other county.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.037. EXCLUSION OF PARTS OF DISTRICT; DISSOLUTION. (a) If any portion of a district governed by Sections 58.035 and 58.036 of this code votes against the creation of the district and the remainder of the district votes for the creation, the district is confirmed and ratified in those portions of the district voting for the creation, and the district is composed only of those portions.

(b) The excluded portions of the district shall be excluded from all debts and obligations incurred after the election; however, all land and property included in the original district shall be subject to the payment of taxes for the payment of all debts and obligations, including organizational expenses, incurred while it was a part of the district.

(c) If a district is created and portions of the proposed district are excluded by the vote in those portions, 10 percent of the voters in the district may file with the Board a petition asking for a new election on the issue. A new election shall be ordered and held for the remaining portion of the district or the district organization may be dissolved by order of the board and a new district formed.

(d) A petition requesting a new election shall be filed within 30 days after the day on which the result of the election is canvassed and declared by the board.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.038. CONVERSION OF CERTAIN DISTRICTS INTO DISTRICTS OPERATING UNDER THIS CHAPTER. (a) Any water improvement district or water control and improvement district which furnishes water for irrigation and does not furnish treated water or sewer services may be converted into a district operating under this chapter.

(b) The governing body of a district which desires to convert into a district operating under this chapter shall adopt and enter in the minutes of the governing body a resolution declaring that, in its judgment, conversion into an irrigation district operating under this chapter and under Article XVI, Section 59, of the Texas Constitution, would serve the best interest of the district and would be a benefit

to the land and property included in the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.039. CONVERSION OF DISTRICT; NOTICE. (a) Notice of the adoption of a resolution under Section 58.038 of this code shall be given by publishing the resolution in a newspaper with general circulation in the county or counties in which the district is located.

(b) The notice shall be published once a week for two consecutive weeks with the first publication not less than 14 full days before the time set for a hearing.

(c) The notice shall:

(1) state the time and place of the hearing;

(2) set out the resolution in full; and

(3) notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.040. CONVERSION OF DISTRICT; FINDINGS. (a) If, on a hearing, the governing body of the district finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, it shall enter an order making this finding and the district shall become a district operating under this chapter.

(b) If the governing body finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, it shall enter an order against conversion of the district into one operating under this chapter.

(c) The findings of the governing body of a district entered under this section are final and not subject to appeal or review.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.041. EFFECT OF CONVERSION. A district that converts into a district operating under this chapter shall:

(1) be constituted an irrigation district operating under and governed by this chapter;

(2) be a conservation and reclamation district under the provisions of Article XVI, Section 59, of the Texas Constitution; and

(3) have and may exercise all the powers, authority, functions, and privileges provided in this chapter in the same manner and to the same extent as if the district had been created under this chapter.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.042. RESERVATION OF CERTAIN POWERS FOR CONVERTED DISTRICTS. (a) Any water improvement district or water control and improvement district, after conversion under Section 58.038 of this code, may continue to exercise all necessary specific powers under any specific conditions provided by the chapter of this code under which the district was operating before conversion, except that no district, after conversion, may engage in the treatment or delivery of treated water for domestic consumption or the construction, maintenance, or operation of sewage facilities.

(b) At the time of making the order of conversion, the governing body shall specify in the order the specific provisions of the chapter of the code under which the district had been operating which are to be preserved and made applicable to the operations of the district after conversion into a district operating under this chapter.

(c) A reservation of a former power under Subsection (a) of this section may be made only if this chapter does not make specific provision concerning a matter necessary to the effectual operation of the converted district.

(d) In all cases in which this chapter does make specific provision, this chapter shall, after conversion, control the operations and procedure of the converted district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 58.071. BOARD OF DIRECTORS. The governing body of a district is the board of directors, which shall consist of five directors.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.072. QUALIFICATIONS. To be qualified for election as a director, a person must be a resident of the state, be the owner of record of fee simple title to land in the district, be at least 18 years of age, and owe no delinquent taxes or assessments to the district. Section 49.052 does not apply to a district governed by this chapter.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 32, eff. Sept. 1, 1995.

Sec. 58.0731. ELECTION OF DIRECTORS FROM PRECINCTS. A district that elected one director from each of five precincts before it converted to a district operating under this chapter shall continue to elect its directors in the same manner from precincts.

Added by Acts 1979, 66th Leg., p. 70, ch. 44, Sec. 1, eff. April 11, 1979.

Sec. 58.084. DISTRICT TAX ASSESSOR AND COLLECTOR. The board may appoint one person to the office of tax assessor and collector, or it may order an election to fill that office.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.089. BONDS OF OFFICERS OF A DISTRICT ACTING AS FISCAL AGENT OR COLLECTING MONEY FOR THE UNITED STATES. (a) If a district is appointed fiscal agent for the United States or if a district is authorized to make collections of money for the United States in connection with a federal reclamation project, each director and officer of the district including the tax assessor and collector shall execute an additional bond in the amount required by the Secretary of the Interior, conditioned on the faithful discharge of his respective office and on the faithful discharge by the district of its duties as fiscal or other agent of the United States under its appointment or authorization.

(b) The additional bonds shall be approved, recorded, and filed as provided in this chapter for other official bonds.

(c) Suit may be brought on the bonds by the United States or any person injured by the failure of the officers or directors of the district to fully, promptly, and completely perform their respective duties.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 58.121. PURPOSES OF DISTRICT. (a) Irrigation districts operating under this chapter are limited purpose districts established primarily to deliver untreated water for irrigation and to provide for the drainage of lands and such other functions as are incidental to the accomplishment of such limited purposes. An irrigation district shall not engage in the treatment or delivery of treated water for domestic consumption or the construction, maintenance, or operation of sewage facilities or provide any other similar municipal services. An irrigation district may cooperate with the United States under the federal reclamation laws for the purpose of:

(1) construction of irrigation and drainage facilities necessary to maintain the irrigability of the land;

(2) purchase, extension, operation, or maintenance of constructed facilities; or

(3) assumption, as principal or guarantor of indebtedness to the United States on account of district lands.

(b) An irrigation district operating under this chapter may contract with municipalities, political subdivisions, water supply corporations, or water users for the delivery of untreated water.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.122. POWERS OF DISTRICT. The district has the functions, powers, authority, rights, and duties which will permit the accomplishment of the purposes for which it was created, including the investigation and, in case a plan for improvements is adopted, the construction, maintenance, and operation of necessary improvements, plants, works, and facilities, and the acquisition of water rights and all other properties, land, tenements, materials, borrow and waste ground, easements, rights-of-way, and everything considered necessary, incident, or helpful to accomplish by any practicable mechanical means any one or more of the objects authorized for the district, subject only to the restrictions imposed by the Constitutions of Texas or the United States. A district also may acquire property deemed necessary for the extension or enlargement of the plant, works, improvements, or service of the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.125. CONSTRUCTION OF IMPROVEMENTS. A district may construct all works and improvements necessary:

(1) for the irrigation of land in the district;

(2) for the drainage of land in the district, including drainage ditches or other facilities for drainage; and

(3) for the construction of levees to protect the land in the district from overflow.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.126. PURCHASE OF MACHINERY AND SUPPLIES. The board may

purchase machinery, materials, and supplies needed in the construction, operation, maintenance, and repair of district improvements.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.127. ADOPTING RULES. A district may adopt and make known reasonable rules to:

(1) prevent waste or the unauthorized use of water; and

(2) regulate residence, hunting, fishing, boating, and camping, and all recreational and business privileges on any body or stream of water, or any body of land, or any easement owned or controlled by the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.128. EFFECT OF RULES. After the required publication, rules adopted by the district under Section 58.127 of this code shall be recognized by the courts as if they were penal ordinances of a city.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.129. PUBLICATION OF RULES. (a) The board shall publish once a week for two consecutive weeks a substantive statement of the rules and the penalty for their violation in one or more newspapers with general circulation in the area in which the property of the district is located.

(b) The substantive statement shall be as condensed as is possible to intelligently explain the purpose to be accomplished or the act forbidden by the rule.

(c) The notice must advise that breach of the rules will subject the violator to a penalty and that the full text of the rules is on file with the principal office of the district where it may be read by any interested person.

(d) Any number of rules may be included in one notice.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.130. EFFECTIVE DATE OF RULES. The penalty for violation of a rule is not effective and enforceable until five days after the publication of the notice. Five days after the publication, the published rules shall be in effect and ignorance of it is not a defense for a prosecution for the enforcement of the penalty.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.133. CONSTRUCTING BRIDGES AND CULVERTS ACROSS AND OVER COUNTY AND PUBLIC ROADS. The district shall build necessary bridges and culverts across and over district canals, laterals, and ditches which cross county or public roads. Funds of the district shall be used to construct the bridges and culverts.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.134. CONSTRUCTING CULVERTS AND BRIDGES ACROSS AND UNDER RAILROAD TRACKS, ROADWAYS, AND INTERURBAN OR STREET RAILWAYS. (a) The district, at its own expense, may build necessary bridges and culverts across or under any railroad tracks or roadways of any railroad or any interurban or street railway to enable the district to construct and maintain any canal, lateral, ditch, or other improvement of the district.

(b) Before the district builds a bridge or culvert, the board shall deliver written notice to the local agent, superintendent, roadmaster, or owner. The railroad company or its owner shall have 60 days in which to build the bridge at its own expense and according to its own plans.

(c) The canal, culvert, ditch, or structure shall be constructed of sufficient size and proper plan to serve the purpose

for which it is intended.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.136. POWER TO CONTRACT. The district may enter into a contract for the use by another of its water, facilities, or service, either inside or outside the district, except that a contract may not be made which impairs the ability of the district to serve lawful demands for service within the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.150. TRANSACTIONS IN DISTRICT NAMES UNDER JOINT OWNERSHIP AND CONSTRUCTION CONTRACT. All bids, bonds, contracts, and other transactions made under a joint ownership and construction contract may be made in the names of the districts which are parties to the contract.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.153. CONTRACT WITH THE UNITED STATES. (a) The board may enter into a contract or other obligation with the United States for the investigation, construction, extension, operation, and maintenance of any federal reclamation project of benefit to the district and authorized under the National Reclamation Act of 1902, as amended.

(b) The board may contract to secure a district water supply from the federal reclamation project and to pay to the United States the agreed cost of it in the form of construction charges, operation and maintenance charges, and water rental charges, as shown by the contract and in accordance with the terms and conditions of the national reclamation law.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.154. CONSTRUCTION CHARGES UNDER A CONTRACT WITH THE UNITED STATES. The construction charges under a contract with the United States may include the cost of drainage and flood-control works necessary to control floods or to maintain the irrigability of district land.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.155. ELECTION TO APPROVE A CONTRACT WITH THE UNITED STATES. (a) The electors of the district shall vote to approve every contract involving the payment of construction charges to the United States. The provisions of this chapter relating to the election to approve the validation of district bonds shall be followed, including the prosecution of an action in court to determine the validity of the contract.

(b) The notice of election shall state the maximum amount, exclusive of operation and maintenance charges, water rental charges, interest, and penalties, payable by the district to the United States under the contract.

(c) The ballot shall be printed to provide for voting for or against the proposition: "The contract with the United States and levy of taxes to make payments under the contract". This is the only proposition that may appear on the ballot.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.156. CONVEYING PROPERTY TO THE UNITED STATES. A district may convey any property to the United States necessary for the construction, operation, or maintenance of federal reclamation works used or to be used for the benefit of the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.157. CONSENT OF UNITED STATES TO ALTER DISTRICT'S BOUNDARIES. Until all money has been paid by the district which is due to the United States under a contract relating to a federal reclamation project, the United States must consent to any change in the boundaries of the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.158. TAXES LEVIED BY DISTRICT UNDER CONTRACT WITH THE UNITED STATES. (a) A district that enters into a contract with the United States shall levy annually sufficient taxes to provide payment of all installments required by the contract.

(b) The board may pay construction charges when provided by contract on the basis of the average gross annual acre income of the land of the district or designated divisions or subdivisions of the district. The Secretary of the Interior shall determine the annual gross acre income.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.159. ASSESSMENTS FOR CONTRACTS WITH THE UNITED STATES. The board shall levy annually sufficient assessments to collect the money required to pay all of the district's obligations in full when due regardless of any delinquency in payment of assessments by any tract of land. If collections in any year are insufficient to pay the obligations of the district, the levy shall be increased sufficiently the following year to cover the deficit.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.160. DURATION OF ANNUAL LEVIES FOR CONTRACTS WITH THE UNITED STATES. The board shall continue annual levies for payment of construction charges each year against each tract of land in the district even though construction charges apportioned against other tracts of land in the district may be paid sooner or later.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.161. SUPERIORITY OF LIEN TO SECURE CONTRACT WITH THE UNITED STATES. The lien against district land created by a contract with the United States shall be superior to the lien created by any district bonds approved subsequent to the date of the contract with the United States.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.162. DISTRICT'S AUTHORITY TO SOLICIT COOPERATION, DONATIONS, AND CONTRIBUTIONS FROM OTHER AGENCIES. A district organized under the provisions of this chapter may solicit cooperation, donations and contributions from:

(1) the United States, the state or nation;

(2) any county, municipality, water improvement district, water control and improvement district, drainage district, or any other political subdivision of the state; or

(3) any person, copartnership, corporation, or association.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.163. EXPENSE OF PROCURING COOPERATION AND CONTRIBUTIONS FROM OTHER AGENCIES. A district may incur reasonable expense to procure cooperation under Section 58.162 of this code in adding to the area of the district or with contributions to the cost of improvements made by the district. The contributions may be either a percentage of cost or a definite annual sum.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.164. AUTHORITY OF CONTRIBUTOR. (a) Any water improvement district, water control and improvement district, levee

improvement district, irrigation district, county, city, town, or other political subdivision of the state may contract to contribute to the cost of the construction of drainage and irrigation water distribution system improvements. The improvements to be constructed may be outside the contributing district, municipality, or other political subdivision of the state, and may be located outside the state or the United States.

(b) The works may be constructed by any agency.

(c) The contribution shall be proportionate to the benefit which the contributor will derive from the proposed improvements.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.165. ISSUANCE OF BONDS BY CONTRIBUTOR. (a) The contract may provide for the issuance of bonds by the contributor and for direct payment from the proceeds of the bonds to contractors on the estimates of the engineer for the contributor.

(b) Before issuing bonds, a contributing political subdivision shall submit the contract for contribution to its electors for approval and for authority to issue the bonds, fix a lien to secure the bonds, and levy, assess, and collect taxes to retire the bonds. The procedure by a contributing political subdivision of the state shall conform to the applicable law under which the political subdivision was organized and authorized to create bonded indebtedness.

(c) The disposition of the proceeds of the bond shall conform to the approved contract of contribution.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.166. ANNUAL TAX BY CONTRIBUTOR. (a) The contract for contribution may provide that instead of issuing bonds the contributor may levy, assess, and collect an annual tax in a specific sum. The levy or assessment is a lien on the property subject to the contributor's taxing power.

(b) The contributor shall collect the tax at its own expense and pay it annually to the district to which the contribution is to

be made. The district shall hold the annual payment as a trust fund and annually apply it to the bonds issued by it to provide funds for the construction of the improvements to which the contribution is made.

(c) The contributor shall submit the contract of contribution to its electors for approval and for authority to levy and assess a sufficient tax to meet the annual payments fixed in the contract. The election for the approval of the contract and the authorized taxes for the fulfillment of the contract shall conform to appropriate law under which the contributing political subdivision was organized and authorized to create bonded indebtedness.

(d) Payment of the annual sums of contribution shall conform to the contract of contribution.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.167. CONTRIBUTIONS FROM UNAPPROPRIATED OR AVAILABLE FUNDS OF CONTRIBUTOR. (a) If the proposed contributor has an unappropriated fund or a fund which is not required for actual use even though otherwise appropriated, the fund may be withdrawn from the project which does not need it and may be applied to pay contributions to the cost of the improvements considered to be a benefit to the contributor but to be constructed by another agency or jointly by the contributor and another agency.

(b) The board of the contributing political subdivision may contract for contributions and contribute from an unappropriated or available fund without submitting the contract and contributions to a vote of the electors of the contributor. However, the contributions shall not be made if they impair the ability of the contributor to meet any outstanding obligation or to adequately and economically discharge the contributor's duty to its electorate or constituency.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.168. LIABILITY ON CONTRACTS OF ACQUIRED IRRIGATION SYSTEM. If a district acquires an established irrigation system which has contracted to supply water to others and the holders of the

contracts or the lands entitled to service of water are not within the district, the contracts and duties shall be performed by the district in the same manner and to the same extent that any other purchaser of the system would be bound.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.170. COVENANTS AND AGREEMENTS INCLUDED IN LEASE. (a) The lease shall expressly state that the sums payable under the terms of the lease and the lease itself shall not constitute an indebtedness or pledge of the general credit of the district within the meaning of any constitutional or statutory limitation of indebtedness. The lease shall contain a statement that payments due under it are not payable from any funds raised or to be raised by taxation.

(b) The lease may contain covenants and agreements which are not inconsistent with the provisions of this code which authorize the lease for:

(1) the management and operation of the leased properties;

(2) the imposition and collection of charges for water;

(3) the disposition of the proceeds of charges;

(4) the insurance, protection, and maintenance of the leased properties;

(5) the creation of other obligations payable from the revenues derived from the operation of the leased properties;

(6) the keeping of books and records by the district; and

(7) other pertinent provisions which the board considers desirable to assure the payment of amounts due under the lease.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.171. REVENUE FOR PAYMENT OF LEASE RENTAL. (a) All money due the lessor under the lease shall be payable solely from the revenue derived by the district from the sale of water supplied through the leased system.

(b) The board shall set and collect charges for the water supplied through the leased properties to produce sufficient revenue

at all times to allow for delinquencies and to pay promptly all rental payments becoming due under the terms of the lease. The board may agree to deposit this money in a separate fund as a first charge on the gross revenue received each year from sales of water, and which shall not be used for any other purpose.

(c) The board may agree in the lease to pay all expenses of operating and maintaining the leased properties from the fund provided by the board each year for the maintenance and operation expenses of the district so that the gross revenue from sale of water will be available exclusively for payment of rentals until the amount required for rentals each year is paid into the separate rental fund.

(d) If the board includes this agreement in the lease, the board shall provide for the payment of sums into the maintenance fund from sources other than the remaining portions of the gross revenue from the sale of water not required to pay rentals which are sufficient each year to pay all expenses of operating the district and maintaining and operating its properties and facilities, including the leased properties.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.172. RECEIVER FOR LEASED IRRIGATION SYSTEM. (a) If the district defaults in the payments due under a lease, the lessor may petition a court of competent jurisdiction to appoint a receiver for the leased properties.

(b) The receiver shall operate the properties and collect and distribute the revenue according to the terms of the lease and the direction of the court.

(c) The receiver has the same rights and powers as the board in its operation of the leased properties.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.173. JOINT LEASE BY TWO OR MORE DISTRICTS. The boards of two or more districts may adopt resolutions to enter into a joint lease under the provisions of Section 58.169 of this code. The joint lease shall specify clearly the respective rights and liabilities of

the districts and shall be subject to all the provisions of Sections 58.169 and 58.172 of this code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.174. AUTHORITY TO ACQUIRE IRRIGATION SYSTEM SUBJECT TO MORTGAGE. A district may acquire by gift, grant, or purchase any part of an irrigation system serving the district which is subject to a mortgage or encumbrance. The mortgage or encumbrances shall not be assumed by the district and shall not be an indebtedness of the district but shall constitute solely a charge on the encumbered property and the revenue from it.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.175. REVENUE FOR PAYMENT OF MORTGAGE. (a) The board may determine conclusively by resolution whether the mortgage or encumbrance represents all or part of the cost of the acquired property and constitutes a purchase money lien on the property.

(b) The board may contract to use and pledge its revenue derived solely from the sale of water and services supplied through the acquired properties for the payment of a purchase money lien.

(c) The board also may use revenue from taxation or from the issuance and sale of bonds to pay all or part of the amount due under the encumbrance if a majority of the electors of the district voting at an election on this proposition approve its use.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.176. ELECTION TO APPROVE REVENUE FOR PAYMENT OF MORTGAGE. (a) If tax and bond revenue is pledged to pay amount due under the encumbrance, the district must hold an election and receive the approval of the electors.

(b) An election to approve the use of tax and bond revenue shall be held in the same manner and with the same voters'

qualifications as provided for elections on the issuance of the bonds of the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.177. JOINT ACQUISITION OF MORTGAGED SYSTEM BY TWO OR MORE DISTRICTS. (a) Two or more districts jointly may acquire by gift, grant, or purchase any part of an irrigation system serving the districts subject to a mortgage or encumbrances in the same manner that a single district may acquire the system.

(b) In the proceedings authorizing the acquisition, the boards of the respective districts shall define clearly the respective rights, interest, and liability of the districts in the acquired property and in the mortgage or encumbrance.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.178. AUTHORITY TO LEASE FACILITIES TO WATER CUSTOMERS. (a) A district may lease to any person, firm, or corporation which is a bona fide water customer of the district any of its facilities and may also lease any of the district's land which is appropriate to the utilization of the leased facilities, including, but not limited to land acquired by eminent domain.

(b) The board and the lessee shall agree on the form of the lease and its terms, conditions, provisions, and stipulations: however, the duration of the lease shall not be longer than the duration of the water contract between the district and the lessee under the primary term of the water contract and any renewal or extension of it.

(c) After a lease to a water customer is authorized by the board, the lease shall be executed by the president or vice-president of the board and attested by the secretary. The lease is valid and effective without any other requirement or prerequisite by the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.180. AMENDMENTS TO WATER RIGHTS. The board may apply to the commission to amend its water rights as provided by Section 11.122 of this code and the rules of the commission.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981.

Sec. 58.181. SUIT TO PROTECT WATER RIGHTS. The board may institute and maintain any suit or suits to protect the water supply or other rights of the district, to prevent any unlawful interference with the water supply or other rights of the district, or to prevent a diversion of its water supply by others.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.182. TRANSFER OF WATER RIGHT. If there is land in a district which has a water right from a source of supply acquired by the district but the land is difficult or impracticable to irrigate from that source of supply, the district may allow transfer of the water right to other land which is adjacent to the district. The adjacent land may be admitted to the district with the same right of water service as the land from which the water was transferred.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.183. SELLING WATERPOWER PRIVILEGES. (a) The district may enter into a contract to sell waterpower privileges if power can be generated from water flowing from the district's reservoirs within its canal system.

(b) The sale of waterpower privileges may not interfere with the district's obligation to furnish an adequate supply of water for the purpose for which the district was organized and for municipal purposes in districts that furnish water for municipal purposes.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.184. SELLING SURPLUS WATER. The district may sell any surplus district water for use in irrigation or for domestic or commercial uses to any person who owns or uses land in the vicinity of the district or to other districts which include land in the same vicinity.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.185. PUMPING WATER TO ANOTHER DISTRICT. If the board considers it advisable, it may contract to pump for or supply another district any water in which the other district has a right. The board shall provide the terms of the contract.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.186. OBTAINING TOPOGRAPHIC MAPS AND DATA. The Texas Water Development Board shall furnish to a district topographic maps and data concerning projects undertaken by the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1987, 70th Leg., ch. 977, Sec. 34, eff. June 19, 1987.

Sec. 58.190. SALE OF PROPERTY NOT ACQUIRED TO CARRY OUT THE PLANS OF THE DISTRICT. The board may sell property bid in by it at any sale under foreclosure of its tax lien or of its lien for charges or assessments, or any property acquired by it other than for the purpose of carrying out the plans of the district, without formally determining that the property is not required to carry out the plans of the district, without giving notice of the intent of the district to sell the property, and without applying the proceeds of the sale

as provided in Sections 58.188 and 58.189 of this code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

SUBCHAPTER E. ELECTION PROVISIONS

Sec. 58.221. LANDOWNER. In this subchapter, a reference to "landowner" refers to a single landowner who is the owner of record of fee simple title to a parcel of land located within the boundaries of a district, regardless of whether the title to the parcel of land is held by:

(1) an individual landowner;

(2) two or more individual landowners; or

(3) a corporation, partnership, or other business entity.

Added by Acts 2001, 77th Leg., ch. 107, Sec. 1, eff. Sept. 1, 2001.

Sec. 58.222. ELIGIBILITY TO VOTE. Notwithstanding the Election Code and any other law, a landowner or the landowner's registered representative under this subchapter is entitled to one vote in an election conducted by a district only if the landowner:

(1) owns at least one acre of irrigable land located within the district's boundaries that is subject to an assessment for maintenance and operating expenses under Sections 58.305(a) and (b);

(2) is entitled to receive and use irrigation water delivered by the district through the district's irrigation facilities; and

(3) satisfies all other requirements for voting prescribed by this subchapter.

Added by Acts 2001, 77th Leg., ch. 107, Sec. 1, eff. Sept. 1, 2001.

Sec. 58.223. ELIGIBILITY REQUIREMENTS. An individual landowner, or the landowner's registered representative, is eligible to vote only if the individual:

(1) is 18 years of age or older;

(2) is a United States citizen;

(3) has not been determined mentally incompetent by a final

judgment of a court;

(4) has not been finally convicted of a felony or, if so convicted, has:

(A) fully discharged the individual's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court; or

(B) been pardoned or otherwise released from the resulting disability to vote; and

(5) is included on the list of qualified voters prepared under Section 58.224(d).

Added by Acts 2001, 77th Leg., ch. 107, Sec. 1, eff. Sept. 1, 2001.

Sec. 58.224. REGISTRATION REQUIRED. (a) A landowner who elects to designate a representative to vote on behalf of the landowner must register the representative to vote on a form prescribed by the district.

(b) The form must be received by the district on or before the 20th day before the date of the election.

(c) The registration is valid for a period prescribed by the district.

(d) The district shall prepare a list of qualified voters as shown by the district's records as of the 60th day before the date of a district election. On or before the 40th day before the date of an election, the district shall:

(1) file the list with the county clerk of each county within which the district's boundaries are located;

(2) post the list in the district's office; and

(3) post the list at each county courthouse in each county within which the district's boundaries are located.

(e) Only an individual landowner or a registered representative of a landowner whose name appears on the list of qualified voters is eligible to vote in a district election.

Added by Acts 2001, 77th Leg., ch. 107, Sec. 1, eff. Sept. 1, 2001.

Sec. 58.225. VOTING BY REPRESENTATIVE. (a) A landowner may authorize an individual to vote in a district election as the landowner's representative as provided by this subchapter.

(b) If ownership of the land is vested in more than one individual or in a corporation, partnership, or other business entity, the vote must be made by a registered representative.

Added by Acts 2001, 77th Leg., ch. 107, Sec. 1, eff. Sept. 1, 2001.

Sec. 58.226. LIABILITY FOR DISTRICT TAXES AND DEBTS. (a) A person who on January 1 of each year is not eligible under this subchapter to vote in an election held by a district is not liable for any tax imposed by the district under Subchapters L or M during the year in which the person is not eligible to vote.

(b) A person continues to be liable for the payment of:

(1) taxes imposed before the date on which a person becomes ineligible to vote under this subchapter;

(2) the pro rata share of any district indebtedness existing on the date on which a person becomes ineligible to vote under this subchapter; and

(3) taxes imposed during any year in which the person is eligible to vote under this subchapter.

Added by Acts 2001, 77th Leg., ch. 107, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER G. WATER CHARGES AND ASSESSMENTS

Sec. 58.301. STATEMENT ESTIMATING WATER REQUIREMENTS AND PAYMENT OF CHARGE. (a) If required by the board, each person who desires to receive irrigation water at any time during the year shall furnish the secretary of the board a written statement of the acreage the person intends to irrigate and the different crops the person intends to plant with the acreage of each crop.

(b) At the time the acreage estimate is furnished to the secretary, each person applying for water shall pay the portion of the water charge or assessment set by the board.

(c) If a person does not furnish the statement of estimated acreage or does not pay the part of the water charge or assessment set by the board before the date for fixing the assessment, the district is not obligated to furnish water to that person during that year.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug.

29, 1977.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 27, eff. September 1, 2013.

Sec. 58.302. CONTRACTS WITH PERSON USING IRRIGATION WATER. (a) The board may require each person who desires to use irrigation water during the year to enter into a contract with the district which states the acreage to be irrigated, the crops to be planted, the amount to be paid for the water, and the terms of payment.

(b) If a person irrigates more acreage than the person's contract specifies, the person shall pay for the additional service.

(c) The directors also may require a person using irrigation water to execute a negotiable note or notes for all or part of the amount owed under the contract.

(d) The contract is not a waiver of the lien given to the district under Section 58.309 against the crops of a person using irrigation water for the service furnished to the person.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 28, eff. September 1, 2013.

Sec. 58.303. AUTHORITY TO DETERMINE RULES AND REGULATIONS. The board may adopt, alter, and rescind rules, and standing and temporary orders which do not conflict with the provisions of this subchapter and which govern:

(1) methods, terms, and conditions of water service;

(2) applications for water;

(3) assessments, charges, fees, rentals, or deposits for maintenance and operation;

(4) payment and the enforcement of payment of the assessments, charges, fees, rentals, or deposits;

(5) furnishing irrigation water to persons who did not apply for it before the date of assessment if required; and

(6) furnishing water to persons who wish to take water for

irrigation in excess of their original applications or for use on land not covered by their original applications if required.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 29, eff. September 1, 2013.

Sec. 58.304. BOARD'S ESTIMATE OF MAINTENANCE AND OPERATING EXPENSES. The board, on or as soon as practicable after a date fixed by standing order of the board, shall estimate the expenses of maintaining and operating the district's water delivery system for the next 12 months. The board may change the 12-month period for which it estimates the expenses of maintaining and operating the water delivery system by estimating such expenses for a shorter period so as to adjust to a new fixed date and thereafter estimating the expenses for 12-month periods following the adjusted fixed date.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1997, 75th Leg., ch. 789, Sec. 3, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 30, eff. September 1, 2013.

Sec. 58.305. DISTRIBUTION OF ASSESSMENT. (a) The board by order shall allocate a portion of the estimated maintenance and operating expenses that shall be paid by assessment against all land in the district to which the district can furnish irrigation water through its water delivery system or through an extension of its water delivery system. This assessment shall be levied against all irrigable land in the district on a per acre basis, whether or not the land is actually irrigated.

(b) The board shall determine from year to year the proportionate amount of the expenses which will be borne by all water users receiving water delivery from the district.

(c) The remainder of the estimated expenses shall be paid by charges, fees, rentals, or deposits required of persons in the

district who use or who make application to use water and other charges approved by the board. The board shall prorate the remainder among the applicants for irrigation water and may consider:

(1) the acreage each applicant will plant, the crop the applicant will grow, and the amount of water per acre used for irrigation purposes; and

(2) other factors deemed appropriate by the board with respect to water used for other nonirrigation uses.

(d) A landowner of irrigable land in the district or a user of water delivered by the district for any purpose other than irrigation who disputes all or a part of a board order that determines the amount of an assessment, charge, fee, rental, or deposit may file a petition under Section 11.041. That petition filed with the commission is the sole remedy available to a landowner or user of water described by this subsection.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 31, eff. September 1, 2013.

Sec. 58.306. NOTICE OF ASSESSMENTS. (a) Public notice of all assessments imposed under Section 58.305(a) shall be given by posting printed notice of the assessment in at least one public place in the district.

(b) Not later than the fifth day before the date on which the assessment is due, notice shall be mailed to each landowner at the address which the landowner shall furnish to the board.

(c) Notice of special assessments shall be given within 10 days after the assessment is levied.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 32, eff. September 1, 2013.

Sec. 58.307. PAYMENT OF ASSESSMENTS. (a) All assessments

imposed under Section 58.305(a) shall be paid in installments at the times fixed by the board.

(b) If a crop for which water was furnished by the district is harvested before the due date of any installment payment, the entire unpaid assessment becomes due at once and shall be paid within 10 days after the crop is harvested and before the crop is removed from the county or counties in which it was grown.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 33, eff. September 1, 2013.

Sec. 58.308. COLLECTION OF ASSESSMENTS BY TAX ASSESSOR AND COLLECTOR. (a) Under the direction of the board, the assessor and collector, or other person designated by the board, shall collect all assessments imposed under Section 58.305(a) for maintenance and operating expenses.

(b) The assessor and collector shall execute a bond in an amount determined by the board, conditioned on the faithful performance of the duties of the assessor and collector and accounting for all money collected.

(c) The assessor and collector shall keep an account of all money collected and shall deposit the money as collected in the district depository. The assessor and collector shall file with the secretary of the board a statement of all money collected once each month.

(d) The assessor and collector shall use a duplicate receipt book, give a receipt for each collection made, and retain in the book a copy of each receipt, which shall be kept as a record of the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 34, eff. September 1, 2013.

Sec. 58.309. LIEN AGAINST CROPS. (a) The district shall have a first lien, superior to all other liens, against all crops grown on a tract of land in the district to secure the payment of an assessment imposed against the tract under Section 58.305(a), interest, and collection or attorney's fees.

(b) If the crops against which the district has a lien under this section are cultivated on a basis other than annual replanting, the owner of the crops shall record with the county clerk of the county where the land on which the crops are cultivated is located a legally sufficient description of the land, including a metes and bounds description or a plat reference.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 35, eff. September 1, 2013.

Sec. 58.310. LIST OF DELINQUENT ASSESSMENTS. Assessments imposed under Section 58.305(a) not paid when due shall become delinquent on the first day of the month following the date payment is due, and the board shall keep posted in a public place in the district a correct list of all persons who are delinquent in paying assessments. If a person who owes an assessment has executed a note and contract as provided in Section 58.302, the person may not be placed on the delinquent list until after the maturity of the note and contract.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1997, 75th Leg., ch. 789, Sec. 3, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 36, eff. September 1, 2013.

Sec. 58.311. WATER SERVICE DISCONTINUED. (a) If a landowner fails or refuses to pay a water assessment or a person fails to pay a charge, fee, rental, or deposit imposed under this chapter or Chapter 49 when due, the landowner's or person's water supply shall be cut

off, and no water may be furnished to the land until all back assessments or other amounts owed to the district are fully paid. The discontinuance of water service is binding on all persons who own or acquire an interest in land for which assessments or other amounts owed to the district are due.

(b) A landowner or person whose water service has been discontinued under Subsection (a) may request that the board reconsider the discontinuance related to a charge, fee, rental, deposit, or penalty, and may not request that the board reconsider a discontinuance related to an assessment. If the board declines to reconsider the discontinuance, the landowner or person may file a petition under Section 11.041. That petition filed with the commission is the sole remedy available to a landowner or person described by this subsection.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 37, eff. September 1, 2013.

Sec. 58.312. SUITS FOR DELINQUENT ASSESSMENTS. Suits for delinquent water assessments or other amounts owed to the district under this subchapter may be brought either in the county in which the district is located or in the county in which the defendant resides. All landowners are personally liable for assessments imposed under Section 58.305(a).

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 38, eff. September 1, 2013.

Sec. 58.313. INTEREST AND COLLECTION FEES. (a) All assessments imposed under Section 58.305(a) shall bear interest from the date payment is due at the rate of 15 percent a year. Assessments not paid by the first day of the month following the date payment is due are delinquent, and a penalty of up to 15 percent of

the amount of the past-due assessment shall be added to the amount due.

(b) If suit is filed to foreclose a lien on crops or if a delinquent assessment is collected by an attorney before or after suit, an additional amount of 15 percent on the unpaid assessment, penalty, and interest shall be added as collection or attorney's fees.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1997, 75th Leg., ch. 789, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 90 (S.B. 611), Sec. 39, eff. September 1, 2013.

Sec. 58.314. RIGHTS OF THE UNITED STATES. (a) If the board enters into a contract with the United States, the remedies in this subchapter available to the district also shall apply to enforce payment of charges due to the United States. The federal reclamation laws shall also apply.

(b) The directors shall distribute and apportion all water acquired by the district under a contract with the United States in accordance with acts of Congress, rules and regulations of the Secretary of the Interior, and provisions of the contract.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.315. SURPLUS ASSESSMENTS. If assessments made under this subchapter are more than sufficient to pay the necessary expenses of the district, the balance shall be carried over to the next year.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.316. INSUFFICIENT ASSESSMENTS. If the assessments made under this subchapter are not sufficient to pay the necessary

expenses of the district, the unpaid balance shall be assessed pro rata, in accordance with the assessments made for the current year. The additional assessments shall be paid under the same conditions and penalties within 30 days after the date of assessment.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.318. CHARGES FOR MAINTENANCE EXPENSES. (a) If maintenance charges are based on the quantity of water used, a fixed minimum charge may be made on all land, water connections, or other service entitled to receive and use water. An additional charge may be made for the use of more water than that covered by the minimum charge.

(b) The board may install proper measuring devices or require that they be installed.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.319. CHARGE TO CITIES AND TOWNS. If a district supplies untreated water, the charge for the use of the water and the time and manner of payment shall be determined by the board or fixed by the contract made with the board.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.320. LOANS FOR MAINTENANCE AND OPERATING EXPENSES. The board may borrow money to pay maintenance and operating expenses at an interest rate of not more than 10 percent a year and may pledge as security any of its notes or contracts with water users or accounts against them.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.321. WATER SERVICE: REFUSED. The board may refuse water service to any person who refuses to pay the charges and assessments for water service or who fails or refuses to pay any taxes levied against his property after six months from the date the taxes become delinquent.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

SUBCHAPTER H. GENERAL FISCAL PROVISIONS

Sec. 58.351. CONSTRUCTION FUND. (a) The proceeds from the sale of bonds shall be deposited in the construction fund.

(b) Money deposited in the construction fund shall be used to pay expenses, debts, and obligations necessarily incurred in the creation, establishment, and maintenance of the district and to pay the purchase price of property and construction contracts, including purchases for which the bonds were issued.

(c) If the bonds were issued in accordance with a contract with the United States, debts and obligations may be paid from the construction fund under the terms of or incident to the contract.

(d) After the payment of obligations for which the bonds were issued, any remaining money in the construction fund may be transferred to the maintenance fund.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.352. MAINTENANCE FUND. (a) The district shall have a maintenance fund which shall include money collected by assessment or other method for the maintenance, repair, and operation of the properties and plant of the district or for temporary annual rental due to the United States.

(b) The maintenance fund shall be used to pay all expenses of maintenance, repair, and operation of the district except the expenses of assessing and collecting taxes for the interest and sinking fund shall be paid from the interest and sinking fund.

(c) The district may pay from the maintenance fund other expenses for which the payment is not provided in this chapter.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.353. AMORTIZATION AND EMERGENCY FUND. (a) The board shall have a competent engineer make an inspection and valuation of the physical property of the district which is subject to decay, obsolescence, injury, or damage by sudden, accidental, or unusual causes, and based on the inspection and valuation, the engineer shall determine as nearly as he can a sufficient amount to be set aside annually to pay for replacement of each item of physical property at the end of its economic life or for the restoration or replacement of any item of physical property if it is lost, injured, or damaged.

(b) The board shall set aside a portion of the maintenance fund as it is collected equal to the amount determined under Subsection (a) of this section and shall place this money in the amortization and emergency fund. No part of this fund may be spent except to replace amortized property or to replace or restore lost, injured, or damaged property.

(c) Any amount in the amortization and emergency fund which is not spent for the purposes for which the fund was created may be invested in bonds or interest-bearing securities of the United States.

(d) The board is not required to create an amortization and emergency fund, but if the board does create the fund, it shall be kept up and maintained.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

SUBCHAPTER I. BORROWING MONEY

Sec. 58.391. AUTHORITY TO BORROW MONEY. The board may declare that funds are not available to meet lawfully authorized obligations of the district, thereby creating an existing emergency, and may borrow money at a rate of not more than 10 percent a year on notes of the district to pay obligations.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.392. SECURITY FOR LOAN. To secure the loan, the board may pledge up to 85 percent of any levied tax of the district which has not been collected by the district or may pledge as collateral any district bonds which have been authorized but not sold.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.393. MATURITY DATE OF LOAN. (a) If taxes are pledged to pay for the loan, the loan shall mature not later than the following April 1.

(b) If preliminary or construction bonds are pledged to pay the loan, the loan shall mature not later than six months from the date it is made.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.394. LOAN SECURED BY BONDS. The amount of the loan may not be more than 25 percent of the district's unsold bonds and the par value of the bonds may not be more than 10 percent of the amount of the loan.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.395. EXPENDITURE OF LOAN PROCEEDS. No money obtained from a loan under Section 58.391 of this code may be spent for any purpose other than the purposes for which the pledged tax was levied or the pledged bonds were authorized.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.396. LOANS ACCOMPLISHED BY SALE OF DISTRICT BONDS. If the loan is secured by the sale of district bonds, the district may enter into an obligation to be conditioned conformably with the

usages of investment banking to repurchase the bonds within the five-year period immediately following the date of the loan.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.397. PLEDGE OF COMMERCIAL INCOME. (a) The term "commercial income" means income other than revenue derived from taxation.

(b) If required to do so, a district may pledge its existing and expected commercial income to secure a loan to the extent the pledge will not obviously substantively impair the ability of the district to pay obligations which are held by others.

(c) If a district expects commercial income in the future but does not have the demonstrated income in an amount adequate to discharge the loan when it matures, the district may pledge the expected commercial income as provided in Subsection (b) of this section and in addition, or as an alternative, may pledge with a power of sale its unsold bonds in a par amount which shall not be more than the amount of the loan plus 10 percent. The district is not required to impound the bonds. The rate of interest on the loan may not be more than six percent.

(d) After commercial income is pledged, it may not be used for any purpose except to pay the debt which it secures, and it shall be applied to the reduction of the secured debt as rapidly as practicable.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.398. EVIDENCE OF DEBT. To evidence loans which are not secured by the sale of bonds, the district may execute and deliver to the lender certificates of indebtedness, notes, or obligations and may pledge its full faith and credit for their payment to the same extent that it may be pledged by district bonds.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.399. RETIRING BONDS. If bonds are impounded or pledged to secure a loan made to a district, as the loan is repaid a proportionate amount of the bonds may be withdrawn, cancelled, and retired.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

SUBCHAPTER J. ISSUANCE OF BONDS

Sec. 58.431. AUTHORITY TO ISSUE BONDS OF DISTRICTS OPERATING UNDER ARTICLE III, SECTION 52, OF THE TEXAS CONSTITUTION. A district which is operating under Article III, Section 52, of the Texas Constitution, may issue bonds and lend its credit in an amount of not more than one-fourth of the assessed valuation of the real property in the district. However, the total indebtedness of any city or town may never be more than the limits imposed by the Texas Constitution.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.432. AUTHORITY TO ISSUE BONDS OF DISTRICTS OPERATING UNDER ARTICLE XVI, SECTION 59, OF THE TEXAS CONSTITUTION. A district operating under Article XVI, Section 59, of the Texas Constitution, may incur debt evidenced by the issuance of bonds which is necessary to provide improvements and maintenance of improvements to achieve the purposes for which the district was created.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.433. AMOUNT OF DEBT LIMITED BY CONSTITUTION. No district may issue bonds or create indebtedness in an amount which is more than that authorized by the Texas Constitution.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.434. ISSUANCE OF PRELIMINARY BONDS. A district may issue preliminary bonds to create a fund to pay:

(1) costs of organization;

(2) costs of making surveys and investigations;

(3) attorney's fees;

(4) costs of engineering work;

(5) costs of the issuance of bonds; and

(6) other costs and expenses incident to organization of the district and its operation in investigating and determining plans for its plant and improvements and in issuing and selling bonds to provide for permanent improvements.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.435. ELECTION ON PRELIMINARY BONDS. (a) The proposition for the issuance of preliminary bonds shall be submitted to the electors of the district.

(b) The election may be held at the same time as the election to confirm the creation of the district or at a later time.

(c) The board shall make an estimate of the expenses to be paid with the proceeds of the preliminary bonds and shall include this estimate in the notice of election.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.436. CONDITIONS OF PRELIMINARY BONDS. (a) After preliminary bonds have been authorized at an election, the board may order the issuance of the bonds in an amount which is not more than the amount stated in the notice of election.

(b) The bonds may be paid serially or on amortization at any time not more than 10 years from their date.

(c) Although the bonds will be known and designated in the records as preliminary bonds, it is not necessary to make this designation on the bonds.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.437. TAX TO PAY PRELIMINARY BONDS. At the time preliminary bonds are issued, a tax shall be levied to pay principal and interest as the bonds mature and to pay the cost of assessing and collecting the taxes.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.438. ISSUANCE OF BONDS. (a) After a district is created and has adopted plans for construction of a plant and improvements, it may issue bonds to pay for constructing the plant and improvements and to pay costs and charges incident to the construction including the cost of necessary property and the retirement of preliminary bonds.

(b) The maximum amount of bonds which may be issued may not be more than the amount of the engineer's estimate plus the additional amounts added by the board in the election order.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.439. PURPOSES FOR ISSUANCE OF BONDS. The district may issue bonds to include:

(1) the cost of organization of the district;

(2) incidental expenses;

(3) the cost of investigation and making plans;

(4) the engineer's work and other incidental expenses;

(5) the cost of retirement of preliminary bonds;

(6) the cost of issuing and selling bonds;

(7) the estimated discount on the bonds;

(8) the cost of operation of a district for the period of construction of the plant and improvements stated in the engineer's report;

(9) an amount to pay interest on the bonds during the period stated in the engineer's report, which shall not be more than three years from the time the bonds are sold; and

(10) any additional cost or expense made necessary by any

change or modification made in the proposed work by the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.440. ENGINEER'S REPORT. (a) Before an election is held to authorize the issuance of bonds, an engineer's report, which includes the plans and improvements to be constructed together with maps, plats, profiles, and data showing and explaining the engineer's report, shall be filed in the office of the district and shall be available for public inspection.

(b) The engineer's report shall contain a detailed estimate of the cost of improvements, including the cost of any property to be purchased, and an estimate of the time required to complete the improvements to the degree to which they may provide service.

(c) The board shall consider the engineer's report and may make changes in the report and note them in the minutes.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.441. ELECTION ORDER. (a) After the engineer's report is filed and approved, the board may order an election in the district to authorize the issuance of bonds.

(b) In the order, the board shall estimate the total amount of money needed to cover the items listed in Section 58.439 of this code.

(c) The election order shall state:

(1) the proposed maximum interest rate on the bonds;

(2) the maximum maturity date of the bonds;

(3) the time and places for holding the election; and

(4) the names of the election officers.

(d) The election order shall be entered in the minutes of the board.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.443. BALLOTS. (a) The proposition to be voted on shall be the issuance of the total amount of bonds covered by the engineer's estimate plus additional estimates made by the board.

(b) The ballots shall be printed to provide for voting for or against: "The issuance of bonds and the levy of taxes to pay for the bonds."

(c) If a contract is proposed with the United States under the federal reclamation laws, the ballots shall be printed to provide for voting for or against: "The contract with the United States and the levy of a tax to pay the contract."

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.444. VOTE AT ELECTION. (a) Bonds of a district operating under the provisions of Article III, Section 52, of the Texas Constitution, may be issued only with the approval of two-thirds of the electors of the district participating in the election.

(b) In a district organized under the provisions of Article XVI, Section 59, of the Texas Constitution, bonds may be issued or indebtedness created only with the approval of a majority of the electors of the district participating in the election.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.445. ORDER TO ISSUE BONDS OR EXECUTE CONTRACT. After the vote is canvassed and the results are declared to be favorable to the proposition, the board shall make and enter an order directing the issuance of the bonds or the execution of a contract with the United States. The bonds or contract shall be in a sufficient amount to pay for the improvements together with all necessary incidental expenses, but the amount may not be more than the amount specified in the election order and notice of election.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.446. RECORD OF BOND PROCEEDINGS SUBMITTED TO ATTORNEY GENERAL. (a) After a district issues bonds other than preliminary bonds, but before they are sold, the record showing all the proceedings in the creation of the district and the issuance of the bonds shall be filed in the office of the attorney general.

(b) The attorney general shall examine the record and give his opinion on it.

(c) The record may be presented to the attorney general before the bonds are printed, and the bonds may be executed after the record is completed.

(d) After the record is approved, the bonds shall be issued or duly executed.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.447. APPROVAL AND REGISTRATION OF BONDS. (a) After the bonds are issued and executed, they shall be submitted to the attorney general for approval.

(b) If the attorney general finds that the bonds are issued according to law and are valid, binding obligations of the district, he shall officially certify the bonds and execute a certificate, which shall be filed with the comptroller and recorded in the book kept for that purpose.

(c) The bonds may not be registered with the comptroller until 20 days after the day of the election authorizing the issuance of the bonds.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.448. VALIDITY OF BONDS. After the bonds are approved by the attorney general and registered by the comptroller, they shall be held to be valid, binding obligations of the district in any suit testing their validity. Any person interested in the bonds may file a suit before the bonds are registered to test the validity, but may not bring suit to test validity after the bonds are registered.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug.

29, 1977.

Sec. 58.449. CONDITIONS OF BONDS. (a) The bonds may be issued to mature at the end of a term of years or to mature serially at any date which is not later than the maximum maturity date stated in the election order.

(b) The bonds may be issued at any rate of interest which is not more than the rate of interest set in the election order.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.450. FORM OF BONDS. (a) The bonds shall be issued in the name of the district and shall be signed by the president and attested by the secretary, with the seal of the district attached.

(b) The bonds shall be issued in denominations of $100 or multiples of $100 and shall be payable annually or semiannually.

(c) The board shall determine and include in the bonds the time, place, manner, and condition of payment of principal and interest on the bonds, but none of the bonds may be made payable more than 40 years from their date.

(d) The lien for payments due to the United States under a contract that was not accompanied by a deposit of bonds with the United States shall be a preferred lien to that of any issue of bonds of any series or any issue of bonds subsequent to the date of the contract.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.453. VALIDATION SUIT. (a) A district may file a suit to determine the validity of the creation of the district and the bonds.

(b) If requested by the Secretary of the Interior, the district shall file a suit to validate a contract made with the United States.

(c) If a validation suit is filed, the bonds do not have to be approved by the attorney general.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.454. EFFECT OF PRIOR REGISTRATION. If bonds are approved by the attorney general and registered by the comptroller before a validation suit is filed, the filing of the suit cancels the prior registration.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.455. PROCEDURE IN VALIDATION SUIT. (a) A validation suit shall be brought by the district in the district court of any county in which all or part of the district is located or in a district court in Travis County.

(b) The suit shall be in the nature of a proceeding in rem.

(c) Any person who is interested in the suit may intervene and file an answer.

(d) The issue shall be tried and determined by the court and judgment shall be entered on the findings.

(e) Repealed by Acts 1981, 67th Leg., p. 2646, ch. 707, Sec. 4(53), eff. Aug. 31, 1981.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2646, ch. 707, Sec. 4(53), eff. Aug. 31, 1981.

Sec. 58.456. NOTICE OF VALIDATION SUIT. (a) To obtain jurisdiction of all parties to the validation suit, a general notice shall be published.

(b) The notice shall be published once a week for at least two consecutive weeks before the term of the court at which the notice is to be returned. The notice shall be published in a newspaper with general circulation in the county or counties in which the district is located, but if no newspaper is published inside the district, the notice shall be published in a newspaper in the nearest county in which a paper is published.

(c) Notice also shall be served on the attorney general in the

manner provided in civil suits.

(d) The attorney general may waive notice if he is furnished a full transcript of the proceedings held in connection with the creation of the district and the issuance of the bonds or held in connection with the authorization of a contract with the United States. A copy of the contract with the United States also must be furnished.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.457. DUTIES OF ATTORNEY GENERAL IN VALIDATION SUIT. (a) The attorney general shall examine all the proceedings and shall require any further evidence and make any further examination which he considers advisable.

(b) The attorney general then shall file an answer to the suit, submitting the issue of whether the proceedings are valid and the bonds are legal and binding obligations of the district, or whether the contract with the United States is legal and binding on the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.458. JUDGMENT IN VALIDATION SUIT. (a) After the trial of the validation suit, if the judgment of the court is adverse to the district on any issue, the district may make an exception and point out the error, and the error may be corrected by the judge in the manner directed by the court.

(b) The judgment shall be rendered showing that the corrections have been made and that the bonds or the contract with the United States are binding obligations of the district.

(c) After the judgment is entered, it is res judicata in all cases which may arise in connection with:

(1) the collection of the bonds or their interests;

(2) any taxes levied to pay charges or any money required to pay a contract with the United States; and

(3) all matters relating to the organization and validity of the district or the validity of the bonds or contract.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.459. EFFECT OF VALIDATION SUIT. (a) After a final judgment is rendered in the validation suit, the bonds or the contract with the United States shall be incontestable.

(b) No suit may be brought in any court of this state to contest or enjoin the validity of the creation of the district, any bonds which are issued, any contract with the United States, or the authorization of a contract with the United States, except in the name of the State of Texas by the attorney general on his own motion or on the motion of any party affected on good cause shown.

(c) The attorney general may not file or prosecute such a suit unless it is based on allegations of fraud disclosed or found after the final judgment in the validation suit was rendered.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.460. CERTIFIED COPY OF DECREE. (a) After the judgment of the district court is entered, the clerk of the court shall make a certified copy of the decree which shall be filed with the comptroller. The comptroller shall record the decree in the book kept for that purpose.

(b) The certified copy of the decree or a certified copy of the comptroller's record of the decree shall be received in evidence in any suit which may affect the validity of the organization of the district or the validity of the bonds or the contract and shall be conclusive evidence of validity.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.461. REGISTRATION OF BONDS AND DECREE. On the presentation of the bonds together with a certified copy of the decree of the court, the comptroller shall register the bonds in a book kept for that purpose. The comptroller shall attach to each bond a certificate stating that the court's decree has been filed and

recorded in his office and shall sign the certificate and attach his official seal.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.462. SALE OF BONDS. (a) After the bonds are issued by the district, the board shall sell the bonds on the best terms and for the best price possible.

(b) The board shall pay the proceeds from the sale of the bonds to the district depository.

(c) The district may exchange bonds for property acquired by purchase or to pay the contract price of work done for the use and benefit of the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.463. TAX LEVY. (a) At the time the bonds are voted, the board shall levy a tax on all property inside the district subject to district taxation in a sufficient amount to redeem and discharge the bonds at maturity.

(b) The board annually shall levy or have assessed and collected taxes on all property inside the district in a sufficient amount to pay installments and interest as they become due.

(c) If a contract is made with the United States, the board annually shall levy taxes on property inside the district in a sufficient amount to pay installments and interest as they become due.

(d) The board may issue the bonds in serial form or payable in installments, and the tax levy shall be sufficient if it provides an amount sufficient to pay the interest on the bonds, the proportionate amount of the principal of the next maturing bond, and the expenses of assessing and collecting the taxes for that year.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.464. ADJUSTMENT OF TAX LEVY. (a) The board may from time to time increase or diminish the tax to adjust it for the taxable values of the property subject to taxation by the district and the amount required to be collected.

(b) The board shall raise an amount sufficient to pay the annual interest of and principal on all outstanding bonds.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 58.466. INTEREST AND SINKING FUND. (a) The district shall have an interest and sinking fund which shall include all taxes collected under this chapter.

(b) Money in the interest and sinking fund may be used only:

(1) to pay principal and interest on the bonds;

(2) to defray the expenses of assessing and collecting the taxes; and

(3) to pay principal and interest due under a contract with the United States if bonds have not been deposited with the United States.

(c) Money in the fund shall be paid out of the fund on warrants by order of the board as provided in this chapter.

(d) The depository shall receive and cancel each interest coupon and bond as it is paid and shall deliver it to the board to be recorded, cancelled, and destroyed.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.467. INVESTMENT OF SINKING FUND. (a) The board may invest any portion of the sinking fund of the district in bonds of the United States, the state, any county or city in the state, any irrigation or water improvement district, school district, or other tax bonds issued under the laws of the state.

(b) The funds may be invested if the bonds to be paid with them do not mature within three years from the time the investment is made and if it is necessary to preserve the best interest of the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.468. REFUNDING BONDS. (a) The district may refund any bonds issued by it by issuing new bonds.

(b) Refunding bonds may be issued only if the old bonds are taken in exchange at their face value or less or new bonds can be sold at a premium and the old bonds retired without loss to the district.

(c) The comptroller may not register the refunding bonds until the old bonds for which the refunding bonds are being issued are presented to him for cancellation or until a valid contract providing for the purchase or exchange of the old bonds is executed and a copy filed in his office.

(d) The comptroller shall keep the refunding bonds until the old bonds are presented to him for exchange or payment, and if the old bonds are presented for payment, the district shall pay them before the refunding bonds are registered.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.469. LIMITATION OF AUTHORITY TO INCUR DEBT AND ISSUE BONDS. (a) For the benefit of purchasers or holders of bonds to be issued or sold, the board of a district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, may limit the authority of the district to incur debt or issue bonds.

(b) The board shall limit the authority by adopting a resolution which states that during a period of not more than 15 years the district will not issue bonds in an amount of more than 25 percent of the assessed value of taxable real property in the district according to the last assessment for district purposes or in an amount of more than a fixed sum or for certain named purposes.

(c) The board shall publish notice of the adoption of the resolution once a week for two consecutive weeks in a newspaper with general circulation in the district. The notice shall state that the resolution will take effect unless a petition against the proposed limitation signed by 20 percent of the electors of the district is

presented within 20 days after the first publication of the notice.

(d) If a petition is filed against the limitation, the resolution will not take effect until it is approved at an election held in the district.

(e) The ballots for the election shall be printed to provide for voting for or against: "The limitation during the term of years of the maximum debt of the district to _____." (The blank space shall be filled with the purpose of the election).

(f) If the limitation is approved at an election or if no petition is filed against the resolution, the district may not issue bonds under any statute or constitutional provision in excess of the limitation during the designated term of years except to complete and make repairs to improvements whose cost will be within the debt limitation.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.470. ISSUING BONDS IN EXCESS OF LIMITATION. (a) A district may issue bonds in excess of a limitation made under Section 58.469 of this code only after the commission has approved the plans and specifications with the estimate of costs.

(b) If the plans, specifications, and estimate are approved, notice of the intention to issue the bonds shall be published once a week for three consecutive weeks in a newspaper with general circulation in the district. The notice shall include a statement of the purpose for issuing the bonds, the amount of the proposed bond issue, and the time the hearing is to be held, which may not be less than 30 days after the notice is first published.

(c) The board shall hold the hearing and any taxpayer, bondholder, or other interested person may appear and be heard.

(d) If the board approves the issuance of the additional bonds in the amount and for the purpose stated in the notice, the question of issuing the bonds shall be submitted to the electors of the district at an election.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.471. MODIFICATIONS OR IMPROVEMENTS. (a) After bonds are issued or a contract is entered into with the United States, the board may give notice of an election to be held to authorize the issuance of additional bonds or a further contract with the United States.

(b) Additional bonds may be issued or a supplemental contract made if the board considers it necessary to:

(1) make modifications in the district or its improvements;

(2) construct further or additional improvements and issue additional bonds on the report of the engineer;

(3) make a supplemental contract with the United States; and

(4) make, on its own motion, additional improvements or purchase additional property to accomplish the purposes of the district and to serve the best interest of the district.

(c) The board shall enter its findings in the minutes.

(d) The election shall be held and the returns made in the manner provided in this chapter for the original election.

(e) If the result of the election favors the issuance of the bonds or the supplemental contract with the United States, the board may order the bonds issued or the contract made with the United States in the manner provided in this chapter.

(f) If a supplemental contract is made with the United States and bonds are not to be deposited with the United States, it is not necessary to issue bonds. If the district is required to raise money in addition to the amount of the contract, the bonds shall be issued only in the additional amount needed.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.472. ISSUANCE OF ADDITIONAL BONDS OR CREATION OF ADDITIONAL INDEBTEDNESS UNDER CERTAIN CONDITIONS. (a) A district may issue additional bonds or create additional indebtedness:

(1) if works, improvements, and facilities constructed under a plan provided in Section 58.440 or 58.452 of this code are inadequate to accomplish the beneficial results which the district's location and conditions demand;

(2) if it is considered necessary to make repairs,

replacements, or additions to the district's improvements which cost more than $25,000; or

(3) if additional money is needed to complete the improvements as planned.

(b) The district shall provide the additional money for the particular purpose in accordance with the provisions of this chapter regulating the creation of bond obligations subject to every limitation with respect to the original proceedings and the substantial protection of the substantive rights of holders of any of the district's outstanding obligations.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.473. INTERIM BONDS. After bonds, other than preliminary bonds or notes, are voted by a district, the board may declare an existing emergency with relation to money being unavailable to pay for engineering work, purchase of land, rights-of-way, construction sites, construction work, and legal and other necessary expenses and may issue interim bonds on the faith and credit of the district in the manner provided in Sections 58.474-58.479 of this code to pay these expenses.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.474. LIMITATIONS ON INTERIM BONDS. (a) Interim bonds shall mature not later than 10 years from the date they are issued, and shall be redeemable at any time before they mature, as provided in this subchapter.

(b) The principal amount of the interim bonds may not be more than 25 percent of the principal amount of the district's bonds which have been voted but not sold.

(c) Before the issuance of the interim bonds, the board, by resolution, may limit the issue to any amount less than 25 percent, and after the amount is determined and fixed by the resolution, no additional interim bonds may be issued and sold until all outstanding interim bonds are paid.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.475. ISSUANCE OF BONDS AND LEVY OF TAX. (a) After bonds other than preliminary bonds are voted, the board may authorize the issuance of the bonds in whole or in part as they are needed by the district.

(b) The board shall levy and annually assess and collect sufficient taxes to pay principal and interest on the bonds.

(c) The bonds may be approved by the attorney general and registered by the comptroller before the filing of the report of the Texas Water Rights Commission under Section 58.451 of this code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.476. DEPOSIT OF BONDS TO SECURE INTERIM BONDS. (a) As the interim bonds are issued and sold, the board, by order, shall deposit bonds of the district which have been validated by a court or approved by the attorney general and registered by the comptroller as provided in Section 58.447 of this code in the district depository.

(b) The bonds deposited shall be credited to the interest and sinking fund account created to pay the interim bonds.

(c) The principal amount of the bonds deposited shall total at least 110 percent of the principal sum of the series of interim bonds which the bonds are deposited to secure.

(d) The interest rate on the interim bonds may not be more than the interest rate on the bonds deposited to secure them.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.477. PROCEDURE FOR ISSUANCE AND SALE OF INTERIM BONDS. (a) Interim bonds shall be issued in the name of the district, signed by the president, and attested by the secretary, with the district seal attached to each bond.

(b) The interim bonds may be issued in the denominations determined by the board and shall be approved by the attorney general

and registered by the comptroller in the same manner as provided in Section 58.447 of this code.

(c) The interim bonds may be sold in the same manner and on the same terms provided by law for the sale of other bonds of the district.

(d) If interim bonds are sold at less than par value and accrued interest, the improvement bonds issued by the district must be sold at an increase over the price authorized by law in an amount sufficient to equal the discount allowed on the interim bonds.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.478. PAYMENT OF INTERIM BONDS. (a) The board shall appropriate the tax levied to pay the bonds deposited to the credit of the interest and sinking fund to pay the interim bonds or as much of that tax as necessary to secure the loan evidenced by the interim bonds.

(b) The proceeds of the tax shall be devoted exclusively to the payment of the principal and interest on the interim bonds.

(c) None of the provisions of this subchapter relating to interim bonds shall be construed as prohibiting the sale of bonds deposited to the credit of the interest and sinking fund to pay interim bonds or of any other bonds of the district, but if any of these bonds are sold, the district depository shall apply the proceeds to the payment of principal and accrued interest on the interim bonds and the remainder to the purposes for which the bonds were authorized.

(d) If none of the bonds are sold at the time an installment on the principal and interest of interim bonds matures, the depository shall cancel the deposited bonds and attached interest coupons in an amount equal to the principal and interest of the interim bonds paid off and discharged.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.479. REDEMPTION OF INTERIM BONDS. (a) At the option of the board, interim bonds may be redeemed at any time or times

before maturity on payment by the district of the principal and accrued interest to the date fixed for redemption by the board.

(b) When interim bonds are called for redemption before maturity, the secretary shall give written notice of the redemption to the bank or banking house named as the place of payment in the bonds or to its successor or assign.

(c) In the notice, the secretary shall designate the bond or bonds called for redemption and payment and shall state the number or numbers of the bonds.

(d) The notice shall include the redemption date which shall not be more than 60 days after the date notice of call for payment is made.

(e) If any of the bonds which are called for redemption are not presented, they shall cease to bear interest from and after the date fixed for redemption.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.480. ALTERNATE METHODS FOR PAYING BONDS. (a) As used in this section and in Sections 58.481-58.484 of this code, "net revenue" means income or increment which may come from ownership and operation of the improvements which are encumbered less the proportion of the district's revenue income reasonably required to provide for administration, efficient operation, and adequate maintenance of the district's services and facilities which are encumbered. Net revenue does not include money derived from taxation.

(b) A district which expects net revenue from operations may secure its bonds in any one of the following:

(1) as provided in Section 58.463 of this code;

(2) by entering into a contract to pledge the net revenue of the district and to mortgage and encumber part or all of the property and facilities, franchise, revenue, and income from operations, and everything acquired or to be acquired by the district; or

(3) as provided in both Subdivisions (1) and (2) of this subsection.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug.

29, 1977.

Sec. 58.481. TAXES TO SECURE CERTAIN BONDS. (a) If bonds are secured as provided in Section 58.480(b)(3) of this code, at the time that net revenue together with money derived from taxes accumulates a surplus in the sinking fund equal to the amount required in the succeeding year to liquidate the interest and principal on the district's bonds maturing in that year, the district's annual tax levies may be lowered to produce not less than 25 percent of the bond maturities for the succeeding year.

(b) If three successive years demonstrate that this net revenue is adequate to protect the district's bonds as they mature, the district's tax may be discontinued until further experience demonstrates the necessity to continue the tax to avoid default in the payment of the district's bonds as they mature.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.482. ELECTION. (a) If the district proposes to issue bonds which will be secured under either Section 58.480(b)(2) or 58.480(b)(3) of this code, the proposition shall be presented at an election held under Section 58.443 of this code.

(b) The ballots for the election shall be printed to provide for voting for or against one of the following propositions:

(1) "The issuance of bonds and the pledge of net revenue for the payment of the bonds.";

(2) "The issuance of bonds, the pledge of net revenue, and the creation of a lien on physical property to secure payment of the bonds."; or

(3) "The issuance of bonds, the pledge of net revenue, and the levy of adequate taxes to pay the bonds."

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.483. HEARING AND ELECTION ON CERTAIN BONDS. (a) A district which plans to issue bonds payable from and secured by a

pledge of net revenue and a lien on the physical property, either or both, without the levy of taxes, is not required to hold a hearing to exclude land or adopt a plan of taxation.

(b) The proposition for issuance of bonds may be submitted at the election held to confirm the creation of the district or at an election called by the board.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.484. HEARING BEFORE ISSUING CERTAIN BONDS. If a district issues its original bonds under Section 58.480(b)(2) of this code and later desires to issue bonds payable in whole or in part from taxes or to levy a tax for maintenance purposes, the district shall hold a hearing to exclude land, and at the time provided by law, shall hold another hearing to adopt a plan of taxation. These hearings shall be held before an election is called to approve the issuance of tax-supported bonds or the levy of a maintenance tax.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

SUBCHAPTER K. TAX PLAN

Sec. 58.501. TAX TO PAY PRELIMINARY BONDS. Taxes to pay principal and interest on preliminary bonds shall be levied and collected on the ad valorem basis.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.502. HEARING TO DETERMINE BASIS OF TAXATION. After the board adopts plans for construction of a plant and improvements to accomplish the purposes of the district and after an election is held to authorize the issuance of construction bonds and the levy of a tax to pay for the bonds, the board shall hold a public hearing to determine whether the taxes to pay the construction bonds and maintenance, operation, and administrative costs of the district shall be levied, assessed, and collected on:

(1) the ad valorem basis;

(2) the basis of assessment of specific benefits;

(3) the basis of assessment of benefits on an equal sum per acre; or

(4) the ad valorem basis for part of the total tax or defined area or property and on the benefit basis for the other part of the tax or defined area or property.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.503. NOTICE OF HEARING. Notice of the time and place of the hearing and the proposition to be determined shall be published once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall be made not less than 10 days before the day of the hearing set in the notice.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.504. CONDUCT OF HEARING. (a) At the hearing, any person who is a taxpayer in the district may appear and offer testimony to show which plan of taxation will be most conducive to equitable distribution of taxes.

(b) The hearing may be adjourned from day to day until all persons wishing to testify have been heard.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.505. ORDER. (a) The board shall adopt the plan of taxation which will, in its judgment under the evidence, be most conducive to the equitable distribution of the district's tax.

(b) If the plan adopted by the board is made under the provisions of Section 58.512 of this code, the order shall specify the proportion of the tax which falls under each designated classification.

(c) The order of the board is final and cannot be reviewed or questioned in any court except on the ground of fraud or palpable and arbitrary abuse of discretion.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.506. CHANGING TAX PLAN. If after a tax plan is adopted the directors find that the best interest of the district and the necessity to maintain adequately and equitably the district's tax requires a change in the tax plan, the board may give notice, hold a hearing, and determine a new plan in the manner provided in Sections 58.502-58.505 of this code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.507. EFFECT OF SECTIONS 58.501-58.506 OF THIS CODE. Nothing in Sections 58.501-58.506 of this code shall be held to alter provisions of this chapter relating to districts which have contracts with the United States or to alter or impair the provisions of this code relating to taxes levied to provide local improvements to a defined area which do not affect the entire district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.508. UNLIMITED AUTHORITY TO COLLECT SERVICE CHARGES AND TAXES. The provisions of this subchapter do not alter or impair the right of a district:

(1) to make, establish, and collect maintenance and operation charges for service rendered;

(2) to levy and collect taxes to secure funds to maintain, repair, and operate all works and facilities; and

(3) to give and maintain proper service for the purposes of its organization.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug.

29, 1977.

Sec. 58.509. LIEN CREATED; NO LIMITATION. Charges or assessments imposed by a district for maintenance and operation of works, facilities, and services of the district shall constitute a lien against the land to which the charges or assessments have been established. No law providing limitation against actions for debt shall apply.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 58.510. PURPOSE OF SECTIONS 58.511-58.529 OF CODE. The purpose of Sections 58.511-58.529 of this code is to give a district the flexibility of taxing power which will permit and cause the tax of the district to be equitably distributed and which will give the highest practicable degree of service under the peculiar physical and economic conditions of the district. To this end, these sections shall be liberally and sympathetically construed.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.511. AUTHORITY TO ADOPT ALTERNATIVE PLANS OF TAXATION. A district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, shall adopt a tax plan under the alternative provisions of Sections 58.512-58.529 of this code either at the time of its creation or before the appointment of commissioners of appraisement under this chapter.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.512. ALTERNATIVE PLANS OF TAXATION. (a) The district's taxes for all purposes, except to pay the cost of preliminary surveys, may be levied, assessed, and collected on an

adopted basis to be chosen from the alternatives provided in this section.

(b) The district's tax plan may be based on any one of the following:

(1) ad valorem basis;

(2) benefit basis;

(3) ad valorem basis to obtain a part or percentage of the total tax or to apply to a specific part of the district and benefit basis applied to the other part of percentage of the tax or to the remaining part of the district; or

(4) either ad valorem or benefit basis on designated property or defined areas of the district to pay for improvements, facilities, or service peculiar to the defined part of the district and not generally and directly benefiting the district as a whole.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.513. ADOPTION OF PLAN OF TAXATION. (a) Except as provided in Section 58.512(b)(4) of this code, before the commission of appraisement is appointed and the construction bonds are sold, the board shall adopt a proposed plan of taxation as provided in Sections 58.502-58.505 of this code.

(b) If the tax plan is not based wholly on the ad valorem basis or on the benefit basis, the order adopting the proposed plan shall specify the portion of the tax to be based on the ad valorem basis and the portion to be based on the benefit basis. The board also shall state the physical and economic reasons, the peculiar diverse local needs, or the comparative potential benefits of different areas of designated property in the district which make it necessary or equitable to levy all or part of the tax on a defined part of the district on the ad valorem or benefit basis.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.514. NOTICE OF ADOPTION OF PLAN AND HEARING. (a) After the tax plan is adopted, the board shall publish notice once a week for two consecutive weeks in one or more newspapers with general

circulation in the county or counties in which the district is located.

(b) The notice shall state:

(1) that the tax plan has been adopted;

(2) that the plan is available for public inspection in the district's office;

(3) that a hearing on the plan will be held by the board at a specified place and at a particular time, which shall not be less than 15 days nor more than 20 days after the first publication of notice; and

(4) that all interested persons may appear and support or oppose all or part of the proposed tax plan and offer testimony.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.515. ORDER ADOPTING TAX PLAN. (a) After all persons have been heard, the board may approve the proposed tax plan or may change or modify the plan.

(b) The board shall adopt a tax plan which it considers, under the evidence before it, most equitably distributes the tax burden and conserves the public welfare.

(c) The board shall enter its order establishing the tax plan, and the plan shall become the basis for the assessment and collection of taxes until the district adopts a different plan.

(d) The order is not subject to judicial review except on the ground of fraud, palpable error, or arbitrary and confiscatory abuse of discretion.

(e) A new plan may be adopted if required to preserve equity of distribution in the manner provided for adopting the original plan; however, no change may be made in the tax plan which will impair the ability of the district promptly to meet all outstanding obligations of the district within the intent of Sections 58.464 and 58.467 of this code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.516. OBTAINING FUNDS TO CONSTRUCT, ADMINISTER,

MAINTAIN, AND OPERATE IMPROVEMENTS AND FACILITIES IN DEFINED PART OF DISTRICT. On adoption of the plan of taxation provided in Section 58.512(b)(4) of this code, the district, in the manner provided in Sections 58.517-58.523 of this code, may provide, pay for, maintain, and operate improvements, service, or facilities peculiar to a designated area or defined property which do not affect the whole district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.517. DEFINING AREA AND DESIGNATING PROPERTY TO BE BENEFITED BY IMPROVEMENTS; ADOPTING TAX PLAN. (a) The board shall define the particular area to be taxed by metes and bounds or designate the property to be served, affected, and taxed.

(b) The board shall adopt a plan for improvements in the defined area or to serve the designated property in the manner provided in Sections 58.440-58.441 of this code.

(c) The board shall adopt a plan of taxation to apply to the defined area or designated property which may or may not be in addition to other taxes imposed by the district on the same area or property. The proportional tax or income contributions of the defined area or designated property and the proportional and equitable interest of the entire district shall be taken into consideration in imposing any tax to an area or piece of property.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.518. NOTICE AND HEARING. The board shall give notice and hold a hearing in the same manner and for the same purpose as provided in Sections 58.514-58.515 of this code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.519. BOARD'S ORDER. At the hearing, if the board decides to define and serve the proposed separate tax area or

separate designated property, it shall enter an order in the record, and if the proposal involves the issuance of bonds, the board shall call an election in the whole district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.520. PROCEDURE FOR ELECTION. (a) The election shall conform to the provisions of this code relating to an election to authorize the issuance of construction bonds.

(b) The board shall submit the appropriate issues to the electors, and the issues may be submitted on the same ballot to be used in another election.

(c) The notice of election shall define the area to be designated and the plan of taxation to be applied.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.521. ELECTION NOT REQUIRED IN SEPARATE ELECTION PRECINCT. If proposed improvements are considered to be required to promote the public welfare or if the owners of the land in a defined area file a petition acknowledged as required for deeds requesting the district to provide improvements and assess a tax only in the defined area, it is not necessary to constitute the area a separate election precinct and have a separate election in that area.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.522. BALLOTS. The ballots for an election under this subchapter shall be printed to provide for voting for or against substantially the proposition: "Designation of the area, issuance of bonds, and levy of a tax to retire the bonds."

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.523. DECLARING RESULT AND ISSUING ORDER. If a majority of the electors approve the proposal, the board shall declare the result and, by order, shall establish the area and define it by metes and bounds or designate the specific property and shall fix the tax basis for the area or property. A certified copy of the order shall be recorded in the minutes of the district and shall constitute notice.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.524. PLEDGE OF FAITH AND CREDIT. If at an election the electors approve the issuance of bonds and the levy of a tax which applies only to a defined area, the district may issue bonds which pledge only the faith and credit based on the property values in the defined area; however, the district may pledge the full faith and credit of the entire district under the condition of authorization in Section 58.528 of this code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.525. ELECTION IN SEPARATE ELECTION PRECINCT. (a) If the improvements to be provided in a defined area are considered peculiarly for the benefit of that area and not required to conserve the public or general welfare in the district as a whole, and if the proposed improvements in that area will require the imposition of a tax only on the property in the area, the defined area is constituted a separate election precinct in which a separate election shall be held to determine if the improvements will be provided and a separate tax levied.

(b) The election shall be held in the manner provided for issuance of bonds under this subchapter.

(c) If a majority of the electors in the defined area approve the propositions, the district shall provide money when necessary and shall provide the improvements and levy the tax.

(d) At an election in the defined area, each qualified elector of the district who owns property in the defined area may elect to vote in the area and not in the precinct of his residence.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.526. ISSUANCE OF BONDS AND LEVY OF TAX FOR DEFINED AREA OR DESIGNATED PROPERTY. (a) After the order is recorded, the district may issue its bonds to provide the specific plant, works, and facilities included in the plans adopted for the area or to serve the property and shall provide the plant, works, and facilities.

(b) In the appropriate case, the board shall levy, assess, and collect taxes on the property located in the defined area or on the designated property in conformity with the adopted tax plan.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.527. CONTRACT TO PROVIDE IMPROVEMENTS, FACILITIES, AND SERVICES TO DESIGNATED PROPERTY OR AREA. (a) Property or areas inside or outside the district may, by contract, be designated to obtain improvements, facilities, or service for the designated area or property.

(b) The designation shall be based on a written petition in conformity with the laws authorizing contracts by a petitioner or person owning, controlling, or governing the property or area to be designated.

(c) The board may make the designation in a contract to provide, administer, maintain, and operate the desired improvements, facilities, or service for the designated area or property, and the designated area or property shall be subject to a tax lien in an amount to retire the obligations incurred by the district to provide the facilities, improvements, or service and to cover the expenses necessary to administer, maintain, and operate the improvements and facilities under the contract.

(d) The contract may not violate the law of this state or the United States and may not result in impairing a vested right or causing the district to fail to serve fully and permanently water demands in the district in the order of preference of uses.

(e) The contract may provide that one governing body may establish the contractual and statutory tax lien in behalf of the

district and may levy, assess, and collect the tax for and on behalf of the district.

(f) The district may not issue bonds pledging the full faith and credit of the district under this section or under Section 58.517 of this code without submitting the proposition to the electors of the whole district under the provisions of this subchapter or under the provisions authorizing the issuance of construction bonds.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.528. AUTHORITY OF DISTRICT. (a) If a majority of the electors in the whole district approve the proposal, the district may issue its bonds to provide the plant, improvements, and facilities peculiar to the defined area or designated property or peculiar to a contract for services and may pledge the full faith and credit of the district to pay for the bonds.

(b) The district shall have a lien on the property in the defined area or on the designated property and may levy, assess, and collect or have levied, assessed, and collected taxes in the area or on the property to protect the district from or to compensate any liability incurred on behalf of the defined area or designated property.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.529. ADMINISTRATIVE AUTHORITY OF BOARD. The board shall administer all business incident to the creation and operation of a defined area or service to designated property unless otherwise provided by contract.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

SUBCHAPTER L. TAXATION ON THE AD VALOREM BASIS

Sec. 58.561. ASSESSMENT OF DISTRICT PROPERTY. The assessor and collector shall assess all taxable property in the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.562. LAW GOVERNING PROPERTY SUBJECT TO TAXATION. The property subject to taxation in the district shall be determined by and governed by the Property Tax Code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 58.585. FINANCE LEDGER. (a) The board shall provide a finance ledger in which the assessor and collector shall be charged with the total assessment of property shown on the tax rolls.

(b) Credit shall be entered in the finance ledger of all collections paid to the depository.

(c) The finance ledger and the books and accounts of the assessor and collector shall be audited by the board semiannually on January 1 and July 1 of each year and at any other times ordered by the board.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 73, eff. Sept. 1, 1989.

SUBCHAPTER M. TAXATION ON THE BENEFIT BASIS

Sec. 58.631. METHOD OF TAXATION FOR DISTRICT UNDER CONTRACT WITH THE UNITED STATES. A district which is operated under contract with the United States may adopt the plan to levy and collect taxes on the benefit basis instead of the ad valorem basis and determine taxes under the provisions of Sections 58.632-58.634 of this code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.632. ASSESSMENT RECORD. When necessary, the board shall apportion and assess the benefits conferred on property subject

to taxation in the district and shall make a record showing the amount and value of benefits to accrue on property in the district and the amount of taxes to be levied and collected on the property. No taxes assessed or adjudged against the property subject to taxation may be more than the benefit which accrues to the property from the organization, operation, and maintenance of the district and its improvements.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.633. NOTICE OF TAXES. After the board makes the record, it shall mail to each property owner whose name appears in the record notice of the amount of taxes levied on his property and the date and place at which the property owner may appear and contest the correctness and equitableness of the tax.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.634. DECISION AFTER HEARING. After the hearing, the board shall determine whether or not the tax is equitable and shall sustain, reduce, or increase the tax to an amount which in the board's judgment is equitable. The decision of the board is final.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.635. METHOD OF TAXATION FOR DISTRICT NOT UNDER CONTRACT WITH THE UNITED STATES. If a district which is not operating under contract with the United States adopts the benefit basis plan for taxation, the levy, assessment, equalization of property values, and collection of taxes shall be made in the manner provided in Sections 58.636-58.648 of this code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.636. COMMISSIONERS OF APPRAISEMENT. As soon as practicable after the approval of the engineer's report and the adoption of the plan for improvements to be constructed, the board shall appoint three disinterested commissioners of appraisement. The commissioners shall be freeholders but not owners of land within the district which they represent.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.637. COMPENSATION OF COMMISSIONERS. On approval by the board, each commissioner is entitled to receive $25 a day for each day he actually serves, plus all necessary expenses.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.638. NOTICE OF APPOINTMENT AND MEETING. Immediately after the commissioners of appraisement are appointed, the secretary of the board shall give written notice to each appointee of his appointment and of the time and place of the first meeting of the commissioners.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.639. FIRST MEETING OF COMMISSIONERS. (a) The commissioners shall meet at the time specified in the notice from the secretary or as soon after that time as possible.

(b) At the meeting the commissioners shall take and subscribe an oath to discharge faithfully and impartially their duties as commissioners and make a true report of the work which they perform. They shall then organize by electing one commissioner as chairman and one commissioner as vice-chairman.

(c) The secretary of the board or, in his absence, a person appointed by the board shall serve as secretary to the commissioners of appraisement and shall furnish to the commissioners any information and assistance which is necessary for the commissioners

to perform their duties.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.640. ASSISTANCE FOR COMMISSIONERS. Within 30 days after the commissioners qualify and organize, they shall begin to perform their duties, and in the exercise of their duties they may obtain legal advice and information relative to their duties from the district's attorney and, if necessary, may require the presence of the district engineer or one of his assistants at any time and for as long as necessary to properly perform their duties.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.641. VIEWING LAND AND OTHER PROPERTY AND IMPROVEMENTS IN DISTRICT. The commissioners shall view the land in the district which will be affected by the district's reclamation plans and shall assess the amount of the benefits and damages that will accrue to the irrigable land in the district from the construction of the improvement.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.642. COMMISSIONERS REPORT. (a) The commissioners shall prepare a report and file it with the secretary of the board. The report shall be signed by at least a majority of the commissioners.

(b) The report shall include:

(1) the name of the owner of each tract of land which is subject to assessment;

(2) a description of the property;

(3) the amount of the benefits or damages assessed on each tract of land;

(4) the time and place at which a hearing will be held on the report to hear objections; and

(5) the number of days each commissioner served and the actual expenses incurred during his service as commissioner.

(c) The day set in the report for the hearing may not be later than 20 days after the report is filed.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.643. NOTICE OF HEARING. (a) After the commissioners' report is filed, the secretary of the board shall publish notice of the hearing on the report at least once a week for two consecutive weeks in a newspaper published in each county in which part of the district is located. The secretary shall mail written notice of the hearing to each person whose property will be affected if his address is known.

(b) The notice shall state:

(1) the time and place of the hearing;

(2) that the commissioners' report has been filed;

(3) that interested persons may examine the report and make objections to it; and

(4) that the commissioners will meet at the time and place indicated to hear and act on objections to the report.

(c) On the day of the hearing, the secretary shall file in his office the original notice and his affidavit stating the manner of publication, the names of persons to whom notice was mailed, and the names of persons to whom notice was not mailed because the secretary by reasonable diligence could not ascertain their addresses. Copies of the notice and affidavit shall also be filed with the commissioners of appraisement and the clerk of the commissioners court.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.644. HEARING. (a) At or before the hearing on the commissioners' report, an owner of land that is affected by the report or the reclamation plans may file exceptions to all or part of the report.

(b) At the hearing, the commissioners shall hear and make

determinations on the objections submitted and may make necessary changes and modifications in the report for objections which are sustained.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.645. WITNESSES AT THE HEARING. At the hearing, interested parties may appear in person or by attorney and are entitled, on demand, to have the chairman of the commissioners of appraisement issue process for witnesses. The commissioners shall have the same power as a court of record to enforce the attendance of witnesses.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.646. COSTS OF HEARING. The commissioners may adjudge and apportion the costs of the hearing in any manner they consider equitable.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.647. COMMISSIONERS' DECREE. (a) After the commissioners have made a final decision, they shall issue a decree confirming their report insofar as it remains unchanged and shall approve and confirm changes in the report.

(b) The final decree and judgment of the commissioners shall be entered in the minutes of the board, and certified copies shall be filed with the county clerk of each county in which part of the district is located and shall be notice to all persons of the contents and purpose of the decree.

(c) The findings of the commissioners which relate to benefits and damages to irrigable land in the district are final and conclusive.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug.

29, 1977. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 74, eff. Sept. 1, 1989.

Sec. 58.648. EFFECT OF FINAL JUDGMENT AND DECREE. The final judgment and decree of the commissioners shall form the basis for all taxation in the district. Taxes shall be apportioned and levied on each tract of irrigable land in the district in proportion to the net benefits to the land stated in the final judgment and decree.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.649. FIXING TAX AS EQUAL SUM ON EACH ACRE. At the election at which the plan of taxation is determined or at any other time before the bonds are issued, the voters of any district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, may vote on the proposition of whether or not benefits for tax purposes shall be fixed as an equal sum on each acre of land that is irrigated or to be irrigated by gravity flow from the canal system of the district. The benefit per acre shall be voted on as it is applied to land in the district that can be irrigated by gravity flow from the irrigation system, and also the benefit to land in the district that cannot be irrigated by gravity flow.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.650. ELECTION. (a) If the board desires to submit the question of whether or not to adopt the method of assessing benefits provided in Section 58.649 of this code, it shall order an election to be held in the district and shall submit the proposition in the manner provided for other district elections.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "Uniform assessment of benefits of $____ per acre on all irrigable land in the district."

(c) The board shall determine the amounts to fill the space in the proposition. The amount of charge per acre may be found by dividing the number of acres of land into the amount of debt to be

incurred by the district in providing for irrigation.

(d) If a majority of the persons voting in the election vote in favor of the proposition, it shall be adopted.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.651. SETTING ANNUAL VALUE OF LAND UNNECESSARY. If the district adopts the uniform acreage valuation for taxation, the valuation shall be applied to all irrigable land in the district, and it is not necessary to annually fix the value of the land. It is also unnecessary for the board to appoint a commission to ascertain or fix the value of the improvement to particular land.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 58.652. PREPARING TAX ROLLS. (a) The board shall examine the tax rolls to determine if all property subject to taxation appears on the tax rolls. The board shall add to the tax roll any property which was left off and shall examine, correct, and certify the tax roll.

(b) Any property owner may protest to the board that his property has not been properly classified. The board shall consider the protest and enter its findings in the minutes in the manner provided by law.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 58.653. RENDITION OF PROPERTY. Land which is taxed on the uniform acreage valuation shall be rendered for taxation as subject to irrigation. When land is rendered, the value need not be stated, and it is unnecessary for the person rendering the property to include the value of the land in an affidavit or for the assessor and collector to set a value on the land.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.654. LAW GOVERNING ADMINISTRATION OF BENEFIT TAX PLAN. In a district that levies taxes on a benefit basis, the rate of taxation and the assessment and collection of taxes shall be governed by the law relating to ad valorem taxes to the extent applicable.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 58.655. IRRIGATING NONIRRIGABLE LAND. If land which is classified as nonirrigable is later irrigated by the district, before the owner of the land receives the water, he shall pay to the district an amount equal to the entire amount that would have been charged to the owner if the land had been originally classified as irrigable.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

SUBCHAPTER N. ADDING AND EXCLUDING TERRITORY AND CONSOLIDATING DISTRICTS

Sec. 58.702. EXCLUSION OF NONAGRICULTURAL AND NONIRRIGABLE LAND FROM THE DISTRICT. After the district is organized, acquires facilities with which to function as an irrigation district, and votes, issues, and sells bonds for the purposes for which the district was organized, land within the district subject to taxation which is not agricultural land or cannot be irrigated in a practicable manner may be excluded from the district by complying with the provisions of Sections 58.703-58.713 of this code. The land may also be excluded pursuant to the provisions contained in either Chapter 119, Acts of the 47th Legislature, Regular Session, 1941, as amended, or Chapter 86, Acts of the 62nd Legislature, Regular Session, 1971, in the same manner as if the district was a water control and improvement district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.703. PREREQUISITE TO APPLICATION FOR EXCLUSION. The owner of land in the district which is not agricultural land or cannot be irrigated in a practicable manner may apply for its exclusion from the district if all taxes levied and assessed by the district on the land to be excluded have been fully paid, including all bond tax and flat water rate assessment.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.704. SUBSTITUTING LAND OF EQUAL ACREAGE AND VALUE. Land which can be irrigated in a practicable manner of at least equal acreage and equal value to the land being excluded must be added to the district simultaneously with the exclusion of the nonagricultural or nonirrigable land.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.705. SECURING APPLICATION TO SUBSTITUTE LAND. The board may require an owner of land in the district who has applied for the exclusion of his nonagricultural or nonirrigable land from the district to procure an application of the owner of land adjoining the boundaries or the canals of the district, and capable of being irrigated in a practicable manner from the facilities of the district, for inclusion in the district of his land in an amount and value at least equal to the land which is to be excluded under the application of the owner of nonagricultural or nonirrigable land. Each application shall set forth the facts concerning the land to be excluded from and the land to be added to the district, including evidence of their reasonable market value.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.706. APPLICATION OF OWNER OF NEW LAND TO BE SUBSTITUTED. The owner of the new land to be added shall submit an application setting forth that the owner of the new land assumes the payment of all taxes to be levied on his land by the district after the date the land is added to the district. The application also shall set forth an agreement by the owner of the new land that the land will be subject to future taxes for bond tax and flat rate and all other assessments levied and assessed by the district as though the land had been incorporated originally in the district. The application also shall contain an agreement by the owner of the new land that the land will be subject to the same liens and provisions as all other land in the district and subject to the statutes governing all other land in the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.707. CONSENT OF OUTSTANDING BONDHOLDERS. (a) The board shall communicate the contents of the applications to exclude nonagricultural or nonirrigable land and to include an equal amount of irrigable land to the holders of outstanding bonds voted, issued, sold, and delivered by the district and payable from taxes levied on property in the district.

(b) If the consent in writing of 95 percent or more of the bondholders to the plan is filed with the board, the board may hold a hearing on the applications.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.708. NOTICE OF HEARING ON APPLICATIONS. The board shall give notice of the hearing on the applications by publishing the time, place, and nature of the hearing one time in a newspaper published in a county in which all or part of the district is located. The newspaper must have been published regularly for more than 12 months preceding the date of the publication of the notice and must have circulation in the district. The notice shall be published not less than 10 days nor more than 20 days before the date of the hearing.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.709. HEARING PROCEDURE. The board shall hear all interested parties and all evidence in connection with the applications.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.710. BOARD'S RESOLUTION TO SUBSTITUTE LAND. If the board finds that all the conditions provided for the exclusion of land and inclusion of other land in the district exist, it may adopt and enter in its minutes a resolution to exclude land which is nonagricultural or nonirrigable in a practicable manner and include land which may be irrigated from the facilities of the district in a practicable manner.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.711. LIABILITY OF EXCLUDED AND INCLUDED LAND. The land excluded from the district is free from any lien or liability created on the excluded land by reason of its having been included in the district. Land added to the district is subject to all laws, liens, and provisions governing the district and the land in the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.712. DUTY TO ADVISE COMMISSION. The board shall furnish the commission a detailed description of the land excluded and a detailed description of the land included within 30 days after the exclusion and inclusion of land under the provisions of Sections 58.702-58.711 of this code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug.

29, 1977. Amended by Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981.

Sec. 58.713. RIGHT TO SERVE NEW LAND INCLUDED IN DISTRICT. The district has the same right to furnish water service to the included land that it previously had to furnish service to the excluded land. The mere inclusion of a larger total acreage than that excluded does not give the district the right to irrigate a larger total acreage or to appropriate a larger quantity or volume of public water for irrigation than the district would have had the right to irrigate or to appropriate before the exclusion and inclusion of the land.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.726. CONSOLIDATION OF DISTRICTS. Two or more districts governed by the provisions of this chapter may consolidate into one district as provided by Sections 58.727-58.730 of this code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.727. ELECTIONS TO APPROVE CONSOLIDATION. (a) After the directors of each district have agreed on the terms and conditions of consolidation, they shall order an election in each district to determine whether the districts should be consolidated.

(b) The directors of each district shall order the election to be held on the same day in each district and shall give notice of the election for at least 20 days in the manner provided by law for other elections.

(c) The districts may be consolidated only if the electors in each district vote in favor of the consolidation.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.728. GOVERNING CONSOLIDATED DISTRICTS. (a) After two

or more districts are consolidated, they become one district, except for the payment of debts created before consolidation, and are governed as one district.

(b) During a period of 90 days after the date of the election to approve consolidation, the officers of each district shall continue to act jointly as officers of the original districts to wind up the affairs of their respective districts.

(c) The consolidation agreement may provide that the officers of the original districts shall continue to act jointly as officers of the consolidated district until the next general election or name persons to serve as officers of the consolidated district until the next general election if all officers of the original districts agree to resign.

(d) New officers of the consolidated district must qualify as officers of the district within the period of 90 days after the election and shall assume their offices at the expiration of the 90-day period.

(e) The current board shall approve the bond of each new officer.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.729. DEBTS OF ORIGINAL DISTRICTS. After two or more districts are consolidated, the debts of the original districts are protected and are not impaired. These debts may be paid by taxes or assessments levied on the land in the original districts as if they had not consolidated or contributions from the consolidated district on terms stated in the consolidation agreement.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.730. ASSESSMENT AND COLLECTION OF TAXES. After consolidation, the officers of the consolidated district shall assess and collect taxes on property in the original district to pay debts created by the original district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug.

29, 1977.

Sec. 58.731. EXCLUSION OF CERTAIN NONIRRIGATED LAND. The board may exclude from the district land that is not being irrigated as provided by Sections 51.759 through 51.766. This section applies only to land that is eligible for exclusion under Section 51.759.

Added by Acts 1995, 74th Leg., ch. 42, Sec. 3, eff. Aug. 28, 1995.

SUBCHAPTER O. DISSOLUTION OF DISTRICT

Sec. 58.781. DISSOLUTION OF DISTRICT PRIOR TO ISSUANCE OF BONDS. (a) If the electors of a district reject the proposal to issue construction bonds by a constitutional or statutory majority vote, the board must dissolve the district and liquidate the affairs of the district as provided in Sections 58.781-58.792 of this code.

(b) Subject to the provisions of Subchapter G of Chapter 50 of this code, if a district finds at any time before the authorization of construction bonds or the final lending of its credit in another form that the proposed undertaking for any reason is impracticable or apparently cannot be successfully and beneficially accomplished, the board may issue notice of a hearing on a proposal to dissolve the district.

(c) Subject to the provisions of Subchapter G of Chapter 50 of this code, if 20 percent of the qualified voters of a district petition the board for a hearing on a proposal to dissolve the district and deposit with the board an amount estimated to cover the actual cost of giving notice and holding the hearing, the board shall publish notice of the hearing within 10 days and shall hold the hearing within 40 days after the filing of the petition, as provided in Sections 58.782-58.785 of this code. If the finding is against the petition, the deposit shall be applied to pay the cost of giving notice and holding the hearing.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.782. NOTICE OF HEARING. The board shall post notice of the hearing on the bulletin board at the courthouse door of each

county in which the district is located and at three or more other public places within the boundaries of the district. The notice must be posted at least 10 days before the hearing on the proposed dissolution of the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.783. HEARING. The board shall hear all interested persons and shall consider their evidence at the time and place stated in the notice.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.784. BOARD'S ORDER TO CONTINUE OR DISSOLVE DISTRICT. The board shall determine from the evidence whether the best interests of the persons, land, and property in the district will be promoted by prosecuting the district's plans or whether the best interests of the persons and property in the district will be served by dissolving the district, and the board shall enter the appropriate findings and order in the record.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.785. JUDICIAL REVIEW OF BOARD'S ORDER. The board's decree to continue or to dissolve the district shall be final and cannot be judicially reviewed except on the ground of fraud, palpable error, or gross abuse of discretion.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.786. APPOINTMENT OF TRUSTEE. (a) If the board orders the dissolution of the district, it shall appoint a director or some other competent person as trustee to close the affairs of the

district as soon as practicable.

(b) The board shall determine the term of service and the amount of compensation for the trustee.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.787. DISCHARGE OF DISTRICT'S OBLIGATIONS BY TRUSTEES. (a) The trustee shall reduce all assets and resources of the district to possession and money and apply them to discharge the outstanding obligations of the district, having regard to specific funds.

(b) If required, the board shall levy, assess, and collect sufficient additional taxes to pay all necessary expenses and outstanding obligations of the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.788. DISCHARGE OF TRUSTEE. The trustee shall be discharged when all obligations of the district are paid and the trustee's account is verified and settled.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.789. FINAL ORDER OF DISSOLUTION. After all obligations are paid and the trustee is discharged, the board shall enter its final order of dissolution and record the final order in the deed records of the county or counties in which the district is located.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.790. WATER RIGHTS OF DISSOLVED DISTRICT. Water rights held from the state shall revert to the state and may not be assigned by the district in anticipation of dissolution.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.791. TAXES IN EXCESS OF DISTRICT'S OBLIGATIONS. (a) If taxes have been collected by the dissolved district in excess of the amount required to liquidate the obligations of the district, the excess shall be paid ratably to the county treasurer or treasurers of the county or counties in which the district was located.

(b) The commissioners courts shall credit the money received from the dissolved district to the interest and sinking fund for any outstanding county bonds. If the county has no outstanding bonds, the money may be applied as the commissioners court lawfully directs.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.793. DISSOLUTION OF DISTRICT FOR FAILURE TO COMPLETE PLANT. Subject to the provisions of Subchapter G of Chapter 50 of this code, if a district has not within 10 years from the date of its creation commenced and completed the construction of a plant and improvements to carry out the purposes of its creation in accordance with the plans adopted by the district, the board may enter a resolution in its minutes to dissolve the district under the provisions of Sections 58.794-58.828 of this code. After compliance with these provisions, a vote of the electors of the district, and the payment of its valid, enforceable indebtedness, the district may be dissolved.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.794. RESOLUTION TO DISSOLVE DISTRICT. The board shall find in its resolution to dissolve the district that the plans of the district are impracticable or that the purposes of the district should be abandoned and shall state the reasons for the finding.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.795. STATEMENTS OF INDEBTEDNESS AND EXPENSES. The board shall prepare or have prepared and shall approve a statement of all valid, enforceable indebtedness of the district and shall enter the statement in the minutes. The board shall prepare or have prepared an estimate of all expenses incurred or to be incurred in the dissolution of the district and in the collection of sufficient taxes to pay all valid, enforceable indebtedness of the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.796. ELECTION TO APPROVE DISSOLUTION OF DISTRICT AND ISSUANCE OF DISSOLUTION BONDS. The board shall enter an order calling an election to determine whether or not the district shall be dissolved and bonds issued to pay the district's indebtedness and estimated expenses.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.797. MAXIMUM AMOUNT, INTEREST RATE, AND MATURITY OF BONDS. The maximum amount of bonds to be voted on and issued shall not be more than the total amount of the approved valid, enforceable indebtedness and the estimate of expenses, exclusive of the estimated cost of collection of taxes. The maximum amount of bonds, exclusive of interest and expenses of collection, to be issued for fees and expenses of dissolution of the district shall not be more than an amount equal to $2 times the number of acres in the district. The bonds shall mature serially over a period of not more than seven years.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.798. NOTICE OF ELECTION. (a) The president and secretary of the board shall issue notice of the election, stating:

(1) the findings of the board with reference to the dissolution of the district;

(2) the amount of bonds to be issued;

(3) the interest rate on the bonds; and

(4) the time and place of the election.

(b) The notice also shall contain a statement of the estimates and the expenses incurred and to be incurred in the dissolution of the district and the collection of taxes for the payment of the bonds and shall state that the bonds will be payable by the levy of taxes on the taxable property in the district in proportion to the values of the property as provided in Section 58.804 of this code.

(c) The notice shall be published once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which any part of the district is located. The first publication shall be at least 14 days before the day of the election.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.799. PROCEDURE FOR HOLDING ELECTION. (a) The ballots for the election shall be printed to provide for voting for or against the proposition: "Dissolution of the district and issuance of dissolution bonds and the levy of taxes for the payment of the bonds."

(b) The election shall be conducted and returns made and canvassed according to the provisions in this chapter for construction bond elections.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.800. ISSUANCE AND SALE OF DISSOLUTION BONDS. (a) If a majority of the electors at the election vote in favor of the dissolution of the district and the issuance of bonds and the levy of taxes for the payment of the bonds, the board shall issue and sell the bonds or any part of them. The bonds shall be known as "dissolution bonds."

(b) The board may deliver the dissolution bonds or any part of

them in satisfaction of the valid, enforceable indebtedness of the district for which the bonds are issued, or in payment of expenses incurred or to be incurred in connection with the dissolution of the district, or in payment of services rendered or to be rendered to the district.

(c) The dissolution bonds shall be:

(1) serially numbered, commencing with the first maturities;

(2) issued in the name of the district;

(3) signed by the president; and

(4) attested by the secretary, with the seal of the district attached.

(d) The board shall determine the maturities of the bonds not to exceed seven years from their date, the denominations of the bonds, and the interest.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.801. DESTROYING UNSOLD BONDS. If a majority of the electors at the election vote in favor of the dissolution of the district, the board shall destroy all unsold bonds of the district and enter an order cancelling all unissued and unsold bonds authorized by the electors. After the destruction and the entry of the order, the bonds shall have no further force or effect.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.802. BOARD'S AUTHORITY TO CONTRACT. The board may contract with trustees, engineers, attorneys, and others it considers necessary or desirable to properly liquidate and wind up the affairs of the district. The board also may assume obligations made by others for the benefit of the district, or from which the district benefited, which in its judgment may be fair and equitable.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.803. TAX TO PAY DISSOLUTION BONDS. The order issuing the dissolution bonds shall provide that the principal of and interest on the bonds shall be payable from the proceeds of a tax to be levied on the taxable property located in the district. The tax shall be in an amount sufficient for the payment of the principal and interest.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.804. DETERMINING AMOUNT OF TAX. (a) The value of all of the taxable property of the district shall be taken at the assessed value, and an amount equal to the total of the principal and all interest to maturity on the bonds voted plus the estimated cost of collection of taxes shall be assessed against the taxable property of the district on the ad valorem basis.

(b) The tax against the taxable property of each owner shall be that portion of the total principal and interest of the dissolution bonds and costs of collection which the assessed value of the taxable property of the owner bears to the total assessed values in the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 58.805. PAYMENT OF TAX. The amount of the tax on the taxable property of each owner shall be payable in equal annual installments, during the period in which the bonds mature, on dates specified in the order issuing the bonds.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.806. ADVANCE PAYMENT OF TAXES IN CASH. The order issuing the bonds shall provide that a property owner may secure release of the entire amount of his taxable property as assessed on the rolls from the tax levied for the dissolution bonds by the

payment in cash of the full amount of tax.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.807. COMPUTING AMOUNT OF ADVANCE CASH PAYMENT. (a) In order to compute the full amount of an advance cash payment, the interest rate on the bonds shall be applied on an annual basis to each unpaid installment of taxes for the number of years the installment of taxes must run before being due. The total of the items computed shall be deducted from the face amount of the unpaid installment of taxes.

(b) In order to compute the full amount of an advance cash payment, the interest rate on the bonds shall be applied on an annual basis to each unpaid past-due installment of taxes for the number of years the installment has been past due, and 10 percent of the face amount of each installment that is past due shall be added as a penalty. The total of the items computed shall be added to the unpaid installments.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.808. SURRENDER OF BONDS IN PAYMENT OF TAXES. The order issuing the bonds shall provide that any of the bonds with all unmatured interest and all appurtenant coupons may be surrendered at any time in payment of all unpaid installments of the taxes. The amount of taxes found to be due by the method provided in Section 58.809 of this code may be discharged by the surrender of the proper amount of dissolution bonds, together with all unpaid appurtenant interest coupons at the face value of the bonds and coupons.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.809. COMPUTING AMOUNT OF PAYMENT MADE BY SURRENDERING BONDS. (a) In order to compute payment by surrendering bonds, the interest rate on the bonds shall be applied on an annual basis to

each unpaid installment of taxes for the number of years the installment must run before being due. The total of the items computed shall be deducted from the face amount of the unpaid installments of taxes.

(b) In order to compute payment by surrendering bonds, the interest rate on the bonds shall be applied to each unpaid installment of taxes for the number of years the installment has been past due and 10 percent of the face amount of each installment of taxes that is past due shall be added as penalty. The total of the items computed shall be added to the face amount of each unpaid installment of taxes.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.810. USE BY TRUSTEE OF ADVANCE PAYMENTS OF TAX. The order issuing the bonds shall provide that the bonds shall be called and redeemed by the trustee in the inverse order of their maturity and in the inverse order of their serial numbers. They shall be paid out of any funds received in advance payment of taxes that are not required for meeting any past-due and unpaid principal and interest or the next maturing installment of principal and interest.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.811. APPROVAL AND REGISTRATION OF DISSOLUTION BONDS. After the dissolution bonds are issued by the board and before they are put in circulation, the bonds, at the option of the board, shall either be submitted to and approved by the attorney general and registered by the comptroller as provided in Sections 58.446-58.448 of this code or be validated by suit as provided in Sections 58.453-58.461 of this code. The provisions of these sections of this code which are not inconsistent with the provisions of this subchapter are applicable to the dissolution bonds provided for in this subchapter.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.812. PREPARING TAX ROLL. Before the issuance and delivery of the bonds, a tax roll shall be prepared in the manner provided by the Property Tax Code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 58.814. NOTICE OF MEETING AS BOARD OF EQUALIZATION. (a) After the tax roll has been filed for at least five days, the board shall publish a notice once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which any part of the district is located. The first publication shall be at least 14 days before the meeting of the board of equalization.

(b) The notice shall call attention to the filing of the tax roll and the name and place or places where the tax roll is filed and available for inspection, and shall notify all interested persons of the time and place of the meeting of the board for the purpose of acting as a board of equalization to examine, correct, equalize, appraise, and approve the valuations of the taxable property of the district and improvements on taxable property as set forth in the tax roll.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.815. MEETING AS BOARD OF EQUALIZATION. At the time and place stated in the notice, the board shall meet and examine the tax roll. The board shall equalize as nearly as possible the value of all property for taxation and fix the value of all property for taxation.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.816. AUTHORITY AND PROCEDURE AS BOARD OF EQUALIZATION. (a) Any interested person may appear at the meeting and offer evidence for or against any matter being considered by the board of

equalization. The board may send for persons and papers, and may administer oaths to persons who testify before the board, and may ascertain the full true value of all property subject to taxation.

(b) The board may lower or raise the valuation of all property listed on the tax roll and place property on the roll which did not appear on it. The board shall correct any errors of assessment and equalize the value of property appearing on the roll.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.817. APPROVING TAX ROLL. After the board of equalization finally fixes the valuation of all taxable property in the district and the tax roll of the district is finally prepared, the board shall meet and consider the tax roll, make all necessary corrections in the tax roll, and endorse its approval on the roll.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.818. APPROVED TAX ROLL NOT SUBJECT TO REVISION. The action of the board in finally approving the tax roll is final and is not subject to revision by the board or any other tribunal.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.820. COLLECTION OF DISSOLUTION TAXES. The county assessor and collector shall collect the taxes shown on the tax roll on the land located in the county for which he is assessor and collector.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 58.821. APPOINTMENT OF TRUSTEE. (a) Before the issuance

and delivery of dissolution bonds, the board shall appoint a trustee of the funds to be collected from the taxes. The trustee shall be an individual or a bank or trust company in the county or one of the counties in which the district is located.

(b) The board may determine the powers, rights, duties, liabilities, and other matters relating to the trusteeship and the appointment of successor trustees which the board considers proper to effectuate the purpose of the trusteeship.

(c) The board may determine the bond to be given by the trustee and the amount to be paid to the trustee from the funds collected from the taxes.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.822. AUTHORITY OF THE TRUSTEE. The trustee shall receive from the assessor and collector all proceeds from the assessments less the assessor and collector's charges and shall be the paying agent of the district for the bonds. The bonds shall be payable at the place of business of the trustee. The trustee shall be authorized by the order providing for the issuance of the bonds to institute suits in the name of the district for the use and benefit of the holders of the bonds and to apply all sums of money recovered in the suits to the payment of the bonds.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.825. DEFAULT IN PAYMENT OF TAX INSTALLMENT. (a) Default in the payment of an installment of taxes levied for the payment of dissolution bonds for 60 days after the installment becomes due and payable as provided by the board shall, at the option of the board or the trustee, immediately mature the remaining installments and cause the entire amount of the taxes to immediately become due and payable.

(b) The trustee shall bring suit for the collection of the entire amount of the taxes and for the foreclosure of the lien securing the payment of the taxes.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.826. PENALTY AND ATTORNEY'S FEE. (a) A penalty of 10 percent of the unpaid amount of taxes shall accrue immediately on default of payment of taxes after the 60 days.

(b) An attorney's fee of 10 percent of the unpaid amount of the taxes is due and payable immediately on institution of suit for collection and foreclosure.

(c) The penalty and attorney's fee shall be recovered in the suit and shall constitute an addition to the taxes and shall be secured by the tax lien.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.827. DISCHARGE OF LIEN. (a) On the final payment of the taxes, either the assessor and collector or the trustee shall issue a certificate certifying that the taxes have been fully satisfied and the lien is released.

(b) The execution and acknowledgment of the certificate and the recording of the certificate in the deed records of the county in which the property is located shall be full and conclusive evidence of the discharge of the taxes and liens.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.828. DISTRICT CONSIDERED DISSOLVED. (a) On the issuance and sale or delivery of the dissolution bonds and the appointment and qualification of the trustee, the secretary shall deposit all available existing records of the district in the office of the county clerk of the county or one of the counties in which the district is located.

(b) The district immediately is considered dissolved for all purposes, except that the taxes levied against the taxable property may be enforced in the name of the district on behalf of the bondholders by the trustee or his successors. The surviving board

may meet from time to time until the dissolution bonds are paid and discharged and may delegate its powers and give instructions to the trustee or his successors as the board sees fit and circumstances warrant. After the payment of all dissolution bonds, interest, and costs of collection the board shall be dissolved.

(c) The board or the trustee if the board transfers the duty to the trustee shall give notice to the county clerk that all dissolution bonds, interest, and costs of collection have been paid. The clerk shall notify the director and librarian of the Texas State Library and arrange for the transfer of the records of the district to the custody of the Texas State Library and Archives Commission.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 75, eff. Sept. 1, 1989.

Sec. 58.829. DISSOLUTION OF DISTRICT IN COUNTIES OF LESS THAN 11,000 POPULATION. Subject to the provisions of Sections 50.251-50.256 of this code, a district located entirely in a county having a population of less than 11,000, according to the last preceding federal census, may be abolished by a majority vote of those entitled to vote and voting at an election held for the purpose of determining whether or not the district should be dissolved.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.830. PETITION FOR DISSOLUTION OF DISTRICT. A petition for the dissolution of the district shall be filed with the board and shall state the name of the district and the purpose for which the election is requested. The petition may refer to the order establishing the district for boundaries, limits, and area of the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.831. SIGNATURES ON PETITION. A petition for

dissolution of the district may be signed and filed in two or more copies. The petition shall be signed by a majority in number of the property owners with land in the district and the property owners of a majority in value of the land in the district, as shown by the tax rolls of the district, or 50 landowners if the number of landowners in the district is more than 50.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.832. PROCEDURE FOR HOLDING ELECTION. (a) An election to determine whether or not the district shall be dissolved shall be held in accordance with the provisions of Subchapter E of this chapter.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "The dissolution of district."

(c) The returns of the election shall be canvassed and the result declared by the board. The board shall enter an order in its minutes declaring the result of the election, which order shall be made and entered in accordance with Section 58.034 of this code. The order shall be filed in the office of the county clerk and recorded in the deed records of the county as provided in Section 58.034 of this code.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.833. ELECTION IN DISTRICT INCLUDING CITY, TOWN, OR MUNICIPAL CORPORATION. In an election to dissolve a district in which a city, town, or municipal corporation is located, the city, town, or municipal corporation shall be a separate voting precinct, and the ballots cast in the city, town, or municipal corporation shall be counted and canvassed to show the result of the election there. If the city, town, or municipal corporation votes against the dissolution of the district and the balance of the district votes for the dissolution of the district, the district shall be dissolved.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug.

29, 1977.

Sec. 58.834. SUBSEQUENT ELECTION. If the proposition to dissolve the district fails to carry at the election held for that purpose, no other election for the same purpose shall be held within one year after the date of the election.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.835. DISTRICT DISSOLVED. If a majority of those voting at the election vote in favor of dissolving the district, the district shall be dissolved and shall have no further authority after the election, except that any debts incurred shall be paid and the organization shall be maintained until all the debts are paid.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.836. TAXES TO PAY INDEBTEDNESS AFTER DISSOLUTION. If a district has outstanding bonds or other indebtedness maturing beyond the current year in which the dissolution occurs, the commissioners court of the county in which the district is located shall levy and have collected, as county taxes are assessed and collected, sufficient taxes on all taxable property in the district to pay the principal of and interest on the bonds and other indebtedness when due.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

CHAPTER 59. REGIONAL DISTRICTS

SUBCHAPTER A. DISTRICT CREATION

Sec. 59.001. PURPOSE AND APPLICATION. (a) The purpose of this chapter is to authorize creation and operation of regional districts for water, sanitary sewer, drainage, and municipal solid waste disposal under Section 59, Article XVI, Texas Constitution.

(b) This chapter applies only in counties with a population of at least 3.3 million or bordering a county with a population of at least 3.3 million.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 149, eff. Sept. 1, 2001.

Sec. 59.002. DEFINITIONS. (a) In this chapter:

(1) "District" means a district created or operating under this chapter.

(2) "Municipal district" means a district created under general law or a special Act operating under Chapter 51, 53, or 54.

(3) "Bond" means bonds, coupons, notes, or any other evidence of indebtedness.

(b) Other terms not defined by this chapter have the same meaning assigned to those terms by Section 49.001.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

Sec. 59.003. CREATION OF DISTRICT. (a) A district may be created by:

(1) The boards of at least 20 percent of the total number of municipal districts to be included in the proposed district may jointly petition the commission for creation of a district. The petition must describe the territory to be included in the district and must include resolutions endorsing creation of the district adopted by each municipal district to be included in the district.

(2) The owner or owners of 2,000 or more contiguous acres may petition the commission for creation of a district.

(3) The commissioners courts of one or more counties may petition the commission for creation of a district in any territory within the county.

(4) The governing body of any city may petition the commission for creation of a district in any territory within the city or its extraterritorial jurisdiction.

(b) Petitions for the creation of a district must:

(1) describe the boundaries of the proposed district by metes and bounds that adequately and completely circumscribe the

property so that there is complete closure of the property or by lot and block numbers if there is a recorded map or plat or subdivision survey of the area;

(2) state the general nature of the work proposed to be done, the necessity of the work, and the cost of any projects of the district as estimated by those filing the petition;

(3) state the name of each petitioner; and

(4) include a name of the district generally descriptive of the locale of the district followed by the words "Regional District."

(c) A proposed district may not have the same name as any other district in the state.

(d) Section 54.013 applies to the composition of districts created under this chapter.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

Sec. 59.004. PURPOSES OF DISTRICT. A district shall be created:

(1) to purchase, own, hold, lease, and otherwise acquire sources of water supply;

(2) to build, operate, and maintain facilities for the transportation of water;

(3) to sell water to cities, to political subdivisions of this state, to water supply corporations, to private business entities, and to individuals;

(4) to purchase, own, hold, lease, and otherwise acquire equipment and mechanisms necessary for sanitary sewer and wastewater treatment;

(5) to build, operate, and maintain facilities for sanitary sewer and wastewater treatment;

(6) to transport and treat sanitary sewer and wastewater effluent of cities and political subdivisions of this state and for private business entities or individuals;

(7) to purchase, own, hold, lease, and otherwise acquire equipment and mechanisms for the drainage of storm water and floodwater; and

(8) for the purposes outlined in Section 54.012.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

Sec. 59.005. MATCHING FUNDS GUARANTEES. If the Texas Water Development Board requires that matching funds be provided as a condition for receiving a loan or grant from the Texas Water Development Board from research and planning funds, the matching funds may not be provided through a guarantee of matching funds by any individual who has a financial interest in the regional district or who will receive any direct financial benefit from a regional district project.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

Sec. 59.006. CONSENT OF CITY. (a) Land in the corporate limits of a city or in the extraterritorial jurisdiction of a city may not be included in a district unless the city grants its written consent by resolution or ordinance to the inclusion of the land in the district.

(b) If the governing body of a city fails or refuses to grant permission for the inclusion of land in its extraterritorial jurisdiction in a district within 120 days after receipt of a written request, the person or entity desiring to create the district may petition the governing body of the city to make available the water, sewer, or drainage service contemplated to be provided by the district.

(c) Failure of the governing body of the city and the requesting district to execute a mutually agreeable contract providing for the service requested within six months after receipt of a request for consent constitutes authorization for the inclusion of land in the district under this section. Authorization for the inclusion of the land in the district under this section means only authorization to initiate proceedings to include the land in the district as otherwise provided by this chapter.

(d) Sections 54.016(e), (f), (g), and (h) apply under this chapter.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

Sec. 59.007. GRANTING OR REFUSING PETITION; EXCLUSION OF TERRITORY. (a) If the commission finds after considering the petition that the petition conforms to the requirements of this

chapter and that the creation of the district would be of benefit to the territory to be included in the district, the commission shall issue an order granting the petition for creation. If the commission finds that part of the territory included in the proposed district will not benefit from the creation of the district, the commission shall exclude that territory from the proposed district and redefine the proposed district's boundaries accordingly.

(b) If the commission finds that the petition does not conform to the requirements of this chapter or that the proposed projects are not of benefit to the territory in the proposed district, the commission shall issue an order either denying the petition or requiring petitioners to amend their petition.

(c) A copy of the order of the commission granting or denying a petition shall be mailed to each city having extraterritorial jurisdiction in the county or counties in which the district is to be located that has requested notice of hearings as provided by Section 54.019.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 39, eff. Sept. 1, 1997.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 59.021. DIRECTORS. (a) The commission shall appoint temporary directors who shall serve until permanent directors are elected.

(b) A petition requesting creation filed in accordance with Section 59.006 may provide that directors be elected by precinct as provided by Subsection (h).

(c) The board of directors is composed of five members unless the petition requesting creation of the district requests and the commission approves a board that consists of seven members.

(d) Permanent directors shall be elected in accordance with Chapter 49.

(e) If the petition for creation has requested the election of seven directors as provided by Subsection (c), unless otherwise agreed, the three directors elected who received the fewest number of votes, whether their election is by precinct or at large, shall serve until the next directors election following the confirmation election

and the four who received the highest number of votes shall serve until the second directors election after the confirmation election.

(f) After the creation of the district, the persons or entities that petitioned for creation or 50 qualified voters of the district may file a petition with the commission requesting to expand the district's board to seven members. If the commission grants the petition, the commission shall appoint two temporary directors. One temporary director shall serve until the next directors election and one shall serve until the next succeeding directors election. At each election one director shall be elected to serve for a four-year term.

(g) If the board of directors of the district is expanded to seven members, four directors shall constitute a quorum and a concurrence of four directors is necessary in all matters pertaining to the business of the district.

(h) A petition for the creation of a district may request that the board be elected to represent a geographic area. If the petition requesting creation of the district is granted, the commission shall establish precincts from which the directors are to be elected. In establishing the precincts the commission shall attempt to have directors represent geographic areas with equal numbers of people and shall comply with the federal Voting Rights Act of 1965 (42 U.S.C. Sections 1971, 1973 et seq.). Thereafter, the board of directors of the district shall revise the precincts from time to time to cause them to comply with the provisions of this subsection.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

Sec. 59.022. ABILITY TO SET RATES. The district may charge rates to persons and entities located outside the district's boundaries on terms, rates, and charges the board of directors may determine to be advisable. In setting rates for out-of-district customers, the board shall set rates sufficient to enable it to meet operation and maintenance expenses and to pay the principal of and interest on debt issued in connection with providing service and to provide a reasonable reserve for replacements to the district. In setting rates, the district may take into consideration past operation and debt service expenses.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

Sec. 59.023. ISSUANCE OF BONDS. The district may issue bonds for the purpose of purchasing, constructing, acquiring, owning, operating, repairing, improving, or extending any district works, improvements, facilities, plants, equipment, and appliances needed to accomplish the purposes of the district, including works, improvements, facilities, plants, equipment, and appliances needed to provide a waterworks system, sanitary sewer system, storm sewer system, solid waste disposal system, and parks and recreational facilities. Prior to issuing bonds or other obligations, a confirmation election must be held in accordance with Chapter 49, and a majority of voters must approve the establishment of the district.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

Sec. 59.024. EXCLUSION OF CERTAIN MUNICIPAL DISTRICTS. (a) A municipal district may be excluded from the district as provided by this section.

(b) To be excluded, the board of directors of the municipal district may adopt a resolution requesting exclusion by a majority vote of its board of directors and shall file the petition with the directors of the proposed district before the first confirmation election.

(c) At the time of the district's confirmation election, a separate voting precinct shall be used for the qualified voters in each municipal district that has filed a petition requesting exclusion. The votes in each precinct shall be tallied separately to determine whether that municipal district will be excluded from the district boundaries.

(d) If a majority of the votes cast in a municipal district requesting exclusion vote against confirmation of the district, the votes cast in the confirmation election shall not be counted for the confirmation election, bond election, or maintenance tax election, and that municipal district must be excluded from the boundaries of the district by the board of directors of the district at the time the results of the election are canvassed.

(e) After a confirmation election at which the district is authorized to be created, the board of directors of the district

shall adopt an order redefining the boundaries of the district to exclude those municipal districts petitioning for exclusion that have voted not to confirm creation of the district.

(f) Before the creation hearing, any municipal district located within the proposed district may petition the commission for a separate voting precinct to be used within the boundaries of the petitioning district at the time of the district's confirmation election. If the commission grants the petition requesting a separate voting precinct, Subsections (c) through (e) apply.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

Sec. 59.025. CONFIRMATION ELECTION. (a) Before a district may be created pursuant to a petition granted by the commission, a confirmation election must be held within the boundaries of the proposed district.

(b) The directors appointed by the commission shall call and hold the confirmation election in the manner provided for conducting elections under Chapter 49. The provisions of those sections relating to a directors election do not apply to an election held under this section.

(c) If the creation of the district is defeated, subsequent confirmation elections may not be held to confirm the creation of the district.

(d) A bond election, maintenance tax election, and any other election may be held at the same time and in conjunction with a confirmation election.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

SUBCHAPTER C. ADDING OR EXCLUDING TERRITORY; DISSOLUTION

Sec. 59.051. ADDING LAND BY PETITION OF LESS THAN ALL LANDOWNERS. In addition to the method of adding land to a district described in Section 59.052, defined areas of land, regardless of whether they are contiguous to the district, may be annexed to the district in the manner provided in Chapter 49.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

Sec. 59.052. FILING OF PETITION. A petition requesting the annexation of a defined area that is signed by a majority in value of the owners of land in the defined area, as shown by the tax rolls of the county or counties in which that area is located, that is signed by 50 landowners if the number of landowners is more than 50, that is signed by the single landowner of 2,000 or more acres of land in the area, or that is signed by a majority of the governing body of a municipal district, a county, or a city requesting annexation shall be filed with the secretary of the board.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

Sec. 59.053. DISSOLUTION OF DISTRICT BEFORE ISSUANCE OF BONDS. (a) If the board considers it advisable before the issuance of any bonds, the board may dissolve the district and liquidate the affairs of the district as provided by Sections 54.734 through 54.738.

(b) If a majority of the board finds at any time before the authorization of bonds that the proposed district and its proposed activities are for any reason impracticable or apparently cannot be successfully and beneficially accomplished, the board may issue notice of a hearing on a proposal to dissolve the district.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

Sec. 59.054. JUDICIAL REVIEW OF BOARD'S ORDER. The board's order to dissolve the district may be judicially reviewed as provided in Chapter 49.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

SUBCHAPTER D. MISCELLANEOUS

Sec. 59.071. ANNEXATION OR INCORPORATION BY CITY. (a) If a city annexes all or any part of the territory within a district, or incorporates all or any part of any territory within a district, the city shall succeed to the powers, duties, assets, and obligations of the district as provided by this chapter.

(b) On annexation of any part of the territory of a district by a city or incorporation by a city of any part of the territory of a

district, the city shall assume a pro rata share of all debt of the district payable in whole or in part by ad valorem taxes incurred for water, sewer, or drainage purposes or any combination of the three purposes. The percentage of the assumption shall be determined by multiplying the total debt of the district payable in whole or in part from taxes incurred for the stated purposes by a fraction, the numerator of which is the assessed value of the property to be annexed or incorporated based on the most recent certified county property tax rolls at the time of annexation or incorporation and the denominator of which is the total assessed value of the property of the district based on the most recent certified county property tax rolls at the time of annexation or incorporation.

(c) After annexation by a city of a portion of the territory of a district or incorporation over any part of the territory of a district, the district may not levy taxes on that territory, and the territory is no longer considered a part of the district for any purpose.

(d) If any district's debt payable in whole or in part from ad valorem taxes is assumed by a city, the governing body of the city shall levy and cause to be collected taxes on all taxable property within the city or provide other funds sufficient to pay the city's pro rata share of the principal of and interest on that debt as it becomes due and payable.

(e) If a city annexes or incorporates the entire territory of the district, the district shall be dissolved in accordance with Sections 43.074, 43.075, and 43.081, Local Government Code, if the district is located in one city or Sections 43.076 through 43.079, Local Government Code, if the district is located in more than one city.

(f) Section 43.071, Local Government Code, does not apply to the annexation of a district created pursuant to this chapter.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

Sec. 59.072. OTHER LAWS. (a) This chapter prevails over any other law in conflict with or inconsistent with this chapter.

(b) Except as specifically provided by this chapter, Chapter 49 and Sections 54.018, 54.019(a), (b), (c), and (d), 54.020, 54.021, 54.023, 54.024, 54.201, 54.205, 54.207, 54.208, 54.502 through

54.505, 54.507(b) and (c), 54.510 through 54.512, 54.514, 54.515, 54.518, 54.520, 54.521, 54.601 through 54.604, and 54.735 through 54.737 apply under this chapter.

(c) Section 54.019(e) does not apply to a district governed by this chapter.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 3, eff. Sept. 1, 1995.

CHAPTER 60. NAVIGATION DISTRICTS--GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 60.001. DEFINITIONS. In this chapter:

(1) "District" means a navigation district organized under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.

(2) "Commission" means the navigation and canal commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.002. AUDIT. Subchapter G, Chapter 49, related to audit of districts, shall apply to districts governed by this chapter.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 33, eff. Sept. 1, 1995.

Sec. 60.003. AUTHORITY TO CONTRACT FOR THE OPERATION OR DEVELOPMENT OF A DISTRICT. A district may contract with any person, foreign or domestic, necessary or convenient to the operation or development of the district's ports and waterways.

Added by Acts 1999, 76th Leg., ch. 535, Sec. 1, eff. June 18, 1999.

Sec. 60.004. ACT OR PROCEEDING OF DISTRICT PRESUMED VALID. (a) An act or proceeding of a district, its governing body, or any local government corporation, development corporation, or nonprofit corporation of the district is conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with all applicable statutes and ordinances if:

(1) the second anniversary of the effective date of the act

or proceeding has expired; and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that second anniversary.

(b) This section does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred; or

(3) a matter that on the second anniversary of the effective date of the act or proceeding:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final court judgment; or

(B) has been held invalid by a final court judgment.

Added by Acts 2007, 80th Leg., R.S., Ch. 1210 (H.B. 1841), Sec. 1, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1330 (S.B. 1531), Sec. 1, eff. June 15, 2007.

Sec. 60.005. EXEMPTION FROM TAXATION AND SPECIAL ASSESSMENTS. The property of a district is public property used for essential public and governmental purposes. The district and the district's property are exempt from all taxes and special assessments imposed by this state or a political subdivision of this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 112 (S.B. 1133), Sec. 1, eff. May 26, 2017.

SUBCHAPTER B. RETIREMENT, DISABILITY, AND DEATH COMPENSATION FUND

Sec. 60.011. CREATION OF RETIREMENT, DISABILITY, AND DEATH COMPENSATION FUND. (a) The commission of any district created under this code or by special law may provide for and administer a retirement, disability, and death compensation fund for district officers and employees and may adopt plans to effectuate this purpose.

(b) The plans may include forms of insurance or annuities, or a combination of both, which the commission considers advisable.

(c) After notice to employees and a hearing, the commission may change the plan or any rule or regulation.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.013. ELIGIBILITY FOR OTHER PENSION FUNDS. The recipients or beneficiaries of a fund created under Section 60.011 of this code shall not be eligible for any other pension retirement funds or direct aid from the State of Texas unless the fund provided for in Section 60.011 of this code is released to the State of Texas as a condition precedent to receiving the other pension aid.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.014. HOSPITALIZATION AND MEDICAL BENEFITS. (a) The commission may include hospitalization and medical benefits for officers and employees as part of the compensation paid to the officers and employees.

(b) The commission may provide for the benefits in Subsection (a) of this section by plan, rule, or regulation, and may change any plan, rule, or regulation from time to time.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER B-1. EMPLOYEE CATASTROPHIC ASSISTANCE PROGRAM

Sec. 60.021. DEFINITIONS. In this subchapter:

(1) "Administrator" means the person designated by the commission or executive director of a district to administer the district's employee catastrophic assistance fund.

(2) "Assistance fund" means an employee catastrophic assistance fund established by a district under this subchapter.

(3) "Employee" means a district employee with 12 or more months of continuous employment with the district who is paid from the general fund of the district, from a special fund of the district, or from special grants paid through the district.

Added by Acts 2009, 81st Leg., R.S., Ch. 1191 (H.B. 3785), Sec. 1, eff. June 19, 2009.

Sec. 60.022. ESTABLISHMENT OF EMPLOYEE CATASTROPHIC ASSISTANCE PROGRAM. (a) The commission or executive director of a district may establish a program in the district to allow an employee to voluntarily transfer time earned by the employee as sick leave or vacation leave to a district employee catastrophic assistance fund.

(b) The commission or executive director of a district shall designate a person to administer the district assistance fund.

(c) The commission or executive director of a district shall identify natural or man-made events classified as catastrophic for purposes of this subchapter.

(d) The commission or executive director of a district may adopt rules and prescribe procedures and forms relating to the operation of the district assistance fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 1191 (H.B. 3785), Sec. 1, eff. June 19, 2009.

Sec. 60.023. EMPLOYEE CONTRIBUTION TO DISTRICT ASSISTANCE FUND. (a) To contribute to the district assistance fund, an employee must submit an application to the administrator in the prescribed form.

(b) On approval by the administrator, in a fiscal year the employee may contribute to the district assistance fund not less than one day or more than 10 days of the employee's combined accrued sick leave and vacation leave time. The administrator shall credit the fund with a dollar amount equivalent to the hourly salary of the employee multiplied by the number of hours contributed by the employee and shall deduct the same number of hours from the accrued sick leave or vacation leave time, as applicable, to which the employee was entitled before the contribution as if the employee had used the time for personal purposes.

(c) An employee who is terminated or who resigns or retires may make a contribution of not more than 10 days of the combined accrued sick leave or vacation leave time earned by the employee, to take effect immediately before the effective date of the termination, resignation, or retirement.

Added by Acts 2009, 81st Leg., R.S., Ch. 1191 (H.B. 3785), Sec. 1, eff. June 19, 2009.

Sec. 60.024. TRANSFERS FROM DISTRICT ASSISTANCE FUND TO EMPLOYEES. (a) An employee may be eligible for a transfer of money from the district assistance fund if, because of a catastrophic event, the employee has suffered unreimbursed losses or expenses.

(b) An eligible employee must apply to the administrator for a transfer of money from the district assistance fund. If the administrator determines that the employee is eligible, the administrator shall approve the transfer of money from the fund to the employee.

(c) An eligible employee may not receive from the district assistance fund more than $5,000 for any catastrophic event. The administrator shall determine the amount of money that is transferred to the eligible employee.

Added by Acts 2009, 81st Leg., R.S., Ch. 1191 (H.B. 3785), Sec. 1, eff. June 19, 2009.

SUBCHAPTER C. ADDITIONAL POWERS AND DUTIES OF CERTAIN DISTRICTS

Sec. 60.031. APPLICATION OF SUBCHAPTER. (a) The provisions of this subchapter shall apply to:

(1) any district not participating with the United States in a navigation project; or

(2) a district participating with the United States in a navigation project if the commission by resolution adopts:

(A) this subchapter; or

(B) sections of this subchapter under which the district will operate.

(b) For the purposes of Subsection (a)(2), a district that contracts with the United States for a navigation project under Subchapter F is considered to be participating with the United States in a navigation project while the contract is in effect.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 4, eff. June 17, 2011.

Sec. 60.032. AUTHORITY TO CONSTRUCT IMPROVEMENTS. The district may construct out of any of its funds, except interest and sinking funds, turning, storage, or yacht basins, harbors, or any facilities which may, in the judgment of the commission, be necessary or useful in the development and utilization of a waterway project for navigation purposes or in aid of navigation purposes. The district may own or lease dredges and other equipment for the construction or maintenance of those projects.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.033. USE OF EQUIPMENT. (a) This subchapter does not authorize a district to borrow or receive money or to levy taxes for the purpose of building tugs, barges, scows, dredges, pile drivers, or other floating equipment for use on the water of the United States other than water coming under the jurisdiction of the district or water necessarily adjunctive to the use of the district, as set forth in Section 60.031 of this code.

(b) Dredges or other equipment, whether owned or leased, shall be confined to use on water under control of the district or a necessary adjunctive part of the district and may not be used in any work or service on any state or federal waterway which is not a necessary adjunctive part of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.034. OIL, GAS, AND MINERAL LEASES. The commission may lease for oil, gas, and minerals rights-of-way, spoil grounds, spoil basins, or any other land owned by a navigation district if it does not interfere with use of or obstruct any natural or artificial waterway of the district used for navigation purposes.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.035. NOTICE OF CERTAIN OIL, GAS, AND MINERAL LEASES. (a) Before a district may enter into a lease under Section 60.034, the district shall have a notice requesting bids on the lease published in a newspaper of general circulation in the district. The

notice shall be published at least once a week for two consecutive weeks before the final date for the receipt of bids. Chapter 71, Natural Resources Code, does not apply to a lease made under this section if the lease is made in accordance with this section and Sections 60.036 and 60.037 of this chapter.

(b) The notice shall include:

(1) the approximate amount of land offered;

(2) the general location of the land;

(3) the time and place for receipt of bids;

(4) the place where specifications may be obtained;

(5) information concerning security for the bids; and

(6) a statement that the commission reserves the right to reject any or all bids.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 1, eff. June 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 2, eff. June 1, 2017.

Sec. 60.036. SECURITY FOR BID ON OIL, GAS, OR MINERAL LEASES. Each bid submitted shall be accompanied by a certified check, cashier's check, or bidder's bond with a responsible corporate surety authorized to do business in Texas. The check or bond shall be in an amount equal to the first rental payment and bonus offered for the lease over and above the royalty and shall guarantee that the bidder will perform the terms of his bid if it is accepted by the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.037. AWARD AND EXECUTION OF OIL, GAS, AND MINERAL LEASES. (a) The commission may lease all or any part of land advertised for lease under Section 60.035 of this code.

(b) The lease shall be awarded to the highest and best bidder and shall reserve at least one-eighth royalty of all gas, oil, or minerals in or produced on the land. The lease shall contain other provisions reasonably necessary to protect the interests of the

district and may not be less favorable to the district than customary commercial leases in the locality.

(c) The chairman and secretary of the commission shall execute the lease under an order, entered in the minutes of the commission, which shall include the consideration for the lease.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.038. SALE OR LEASE OF LAND. (a) A district may sell or lease all or any part of land owned by it, whether the land is acquired by gift or purchase, in settlement of any litigation, controversy, or claim in behalf of the district, or in any other manner, except that lands or flats heretofore purchased from the State of Texas under Article 8225, Revised Civil Statutes of Texas, 1925, or granted by the State of Texas in any general or special act, may be sold only to the State of Texas or exchanged with the State of Texas for other lands or exchanged for adjacent littoral land as authorized by Section 61.117 of this code.

(b) Before a district may sell land, the commission shall determine by resolution that the land is no longer needed for use by the district in connection with the development of a navigation project.

(c) Sale or lease of land shall be made as provided by Sections 60.039-60.042 of this code.

(d) A district may not convey or exchange an interest in real property to an individual or private entity for the purpose of bedding or harvesting oysters, regardless of whether the bedding or harvesting is to be done directly by the individual or private entity or the heirs, successors, or assigns of the individual or private entity.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1973, 63rd Leg., p. 556, ch. 237, Sec. 3, eff. June 11, 1973; Acts 1975, 64th Leg., p. 801, ch. 310, Sec. 1, eff. May 27, 1975.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 5, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 236 (S.B. 1438), Sec. 1, eff. May 25, 2019.

Sec. 60.039. SURFACE LEASE. (a) Except as provided by Subsection (c), the commission may lease the surface of land for not more than 50 years by the entry of an order on the minutes of the commission and the execution of a lease in the manner provided by the original order. The lease may not be extended beyond the 50-year period by renewal, extension, or otherwise.

(b) The commission or the executive director of the district, or a person authorized by the commission or the executive director, may enter into a lease for a monthly tenancy or a tenancy from month to month. The lease term may only exceed one year if:

(1) the commission enters an order on the minutes; and

(2) the execution of the lease is in the manner provided by the original order for the lease.

(c) This subsection applies only to a district that operates a port in this state that is wholly located in a county that borders the Gulf of Mexico and that is adjacent to a county that contains an international border and borders the Gulf of Mexico. The district may lease the surface of land for not more than 99 years or may extend a lease to a period not to exceed 99 years only if:

(1) the lease conveys an interest in the surface of the land for residential purposes only;

(2) at the time the lease will be entered into or extended, the district has not less than 50 leases in effect that convey an interest in the land surface for residential purposes only; and

(3) any part of the land owned by the district is subdivided into lots intended for residential use.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1993, 73rd Leg., ch. 23, Sec. 1, eff. April 6, 1993; Acts 2003, 78th Leg., ch. 588, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 6, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 539 (H.B. 1716), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 789 (H.B. 2610), Sec. 1, eff. September 1, 2017.

Sec. 60.040. PUBLICATION OF NOTICE FOR SALES, EASEMENTS, AND LEASES IN EXCESS OF 50 YEARS. (a) Before making a sale, easement, or lease of real property for more than 50 years, the district shall publish a notice in the manner provided in Section 60.035.

(b) A district may enter into negotiations with one or more potential buyers, easement grantees, or lessees before the publication of the notice without affecting the validity of the sale, easement, or lease.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1993, 73rd Leg., ch. 23, Sec. 2, eff. April 6, 1993; Acts 2003, 78th Leg., ch. 588, Sec. 2, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 539 (H.B. 1716), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 3, eff. June 1, 2017.

Sec. 60.041. SECURITY FOR BIDS ON REAL PROPERTY TO BE SOLD OR LEASED FOR MORE THAN 50 YEARS. Each bid submitted on real property to be sold or leased for more than 50 years under Section 60.040 shall be accompanied by a certified check, cashier's check, or bidder's bond with a responsible corporate surety authorized to do business in Texas. The check or bond shall be in an amount equal to five percent of the bid price for the real property or 100 percent of the first rental payment under the lease and shall guarantee that the bidder will perform the terms of the bid if it is accepted by the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1993, 73rd Leg., ch. 23, Sec. 3, eff. April 6, 1993; Acts 2003, 78th Leg., ch. 588, Sec. 3, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 539 (H.B. 1716), Sec. 3, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 4, eff. June 1, 2017.

Sec. 60.042. AWARD AND EXECUTION OF DEED OR LEASE IN EXCESS OF

50 YEARS. (a) After notice is published under Section 60.040, the district may sell or lease in accordance with that section all or any part of the real property to the highest and best bidder for an amount which is not less than the reasonable market value in the locality at the time and place of the sale or lease.

(b) The commission shall adopt a resolution or order confirming the sale or lease. The resolution or order shall include or incorporate by reference the terms of the sale or lease and the consideration and shall provide that the executive director of the district, or a person authorized by the executive director of the district, is authorized to execute the deed or lease as soon as the successful bidder complies with the terms of the bid.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1993, 73rd Leg., ch. 23, Sec. 4, eff. April 6, 1993; Acts 2003, 78th Leg., ch. 588, Sec. 4, eff. June 20, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 5, eff. June 1, 2017.

Sec. 60.043. POWER OVER WATERWAYS. (a) The commission shall have absolute control over channels, or other waterways within the corporate limits of the district and turning basins, yacht basins, and storage basins. The commission may prevent or remove any obstructions of these facilities and fix proper fees, charges, and tolls for their use.

(b) The fees, charges, and tolls charged by the district shall be in addition to charges made, as provided by law, for any facilities used by any ship, boat, vessel, or any other character of craft used for water transportation for commercial purposes. The term commercial purposes shall be limited to any common carrier, contract carrier, or public or private carrier that shall transport or have transported persons, commodities, goods, wares, or merchandise for hire or compensation.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.044. LAW GOVERNING COMMISSION. The commission of any district operating under this subchapter shall be governed by the

provisions of Sections 63.087-63.088 and 63.090-63.094 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER D. REGULATORY POWERS

Sec. 60.071. GENERAL RULE-MAKING AUTHORITY. The commission of a district which owns, operates, and maintains wharves, docks, piers, sheds, warehouses, and other similar terminal facilities which are not located inside the boundaries of any incorporated city, town, or village may pass, amend, and repeal any ordinance, rule, or police regulation which is not contrary to the constitution or laws of this state and which is necessary to protect the property and to promote the health, safety, and general welfare of persons using the property.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.072. SPECIFIC POWERS OF DISTRICTS. To accomplish the purposes stated in Section 60.071 of this code, the commission may exercise the following powers:

(1) control the operation of all types of vehicles using the roads maintained by the district, other than roads dedicated to public use by formal dedication, and prescribe the speed, lighting, and other requirements of these vehicles;

(2) prohibit loitering on docks, wharves, piers, warehouses, sheds, or other properties of the district;

(3) control the operation of all types of vessels using harbors, turning basins, basins, or navigable channels of the district and prescribe the speed, lighting, and other requirements of these vessels;

(4) prohibit smoking and the use of flares, open fires, and inflammable, highly combustible, or explosive substances and materials on docks, wharves, piers, warehouses, sheds, and other properties of the district, or on those parts of the properties and at those times or during those periods as may, in the judgment of the commission, be determined to be dangerous to any of the property or inimical to the safety or general welfare of persons using the property or parts of it;

(5) prevent on any of the property all trespasses, breaches

of the peace and good order, assaults and batteries, fighting, quarrels, use of abusive, profane, or insulting language, disorderly conduct, and misdemeanor theft and punish offenders;

(6) suppress and prevent any riot, affray, disturbance, or disorderly assembly on any of the property; and

(7) license and regulate or suppress and prevent hawkers and peddlers utilizing or attempting to utilize the roads and other property of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.0725. NUISANCES; POLLUTION. The commission may suppress and prevent nuisances, pollution, and improper disposal of materials on any district property to:

(1) accomplish the purposes stated in Section 60.071;

(2) protect other district property; or

(3) promote the health, safety, and general welfare of persons using other district property.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 7, eff. June 17, 2011.

Sec. 60.073. ENFORCEMENT. The commission may provide by ordinance for the enforcement of the provisions of this subchapter and of any ordinance, rule, or regulation made under this subchapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.074. STYLE OF ORDINANCES. The style of an ordinance enacted by the commission shall be: "Be it ordained by the navigation and canal commissioners of the _____" (inserting the name of the navigation district).

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.075. PUBLICATION OF ORDINANCE, RULE, OR REGULATION; PROOF OF PUBLICATION. (a) Each ordinance, rule, or regulation

enacted by the commission under this subchapter which imposes a fine or other penalty shall be published in every issue of a newspaper of general circulation published in the district for the 10-day period immediately following its adoption. If the only newspaper published in the district is published weekly, the publication shall be made in two consecutive issues of the newspaper.

(b) Proof of publication under Subsection (a) of this section shall be made by the printer or publisher of the newspaper by affidavit filed with the secretary of the commission and shall be prima facie evidence of publication and adoption of the ordinance, rule, or regulation in all courts of this state.

(c) In lieu of the publication of the entire ordinance, rule, or regulation, the commission may provide for the publication of a descriptive caption or title, stating in summary the purpose of the ordinance, rule, or regulation and the penalty for violation.

(d) An ordinance, rule, or regulation shall take effect and be in force from and after publication under Subsection (a) of this section unless otherwise provided.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.076. CONFLICT WITH LAW. No ordinance, rule or regulation adopted by a district under this subchapter may conflict with any law, statute, rule, or regulation of this state.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.077. AUTHORITY OF PEACE OFFICERS. (a) In prosecutions involving the enforcement of the provisions of this subchapter or the enforcement of any ordinance, rule, or regulation of the district, any sheriff, constable, or other duly constituted peace officer of the State of Texas or any peace officer employed or appointed by the commission may make arrests, serve criminal warrants, subpoenas, or writs, and perform any other service or duty which may be performed by any sheriff, constable, or other duly constituted peace officer of the State of Texas in enforcing other laws of this state.

(b) A peace officer employed or appointed by the commission has the same powers and duties as a peace officer described by Article 2.12, Code of Criminal Procedure.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 933 (H.B. 3435), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1330 (S.B. 1531), Sec. 2, eff. June 15, 2007.

Sec. 60.0775. POLICE RESERVE FORCE. (a) The commission of a district that has established a police force may establish a volunteer police reserve force.

(b) The commission shall establish qualifications and training standards for reserve force members.

(c) The commission may limit the size of the reserve force.

(d) The chief of the district police force shall appoint volunteers to serve as reserve force members. Members are not district employees and serve without pay and at the chief's discretion.

(e) The chief of police may call the reserve force into service at any time the chief considers it necessary to have additional officers to preserve the peace and enforce the law.

(f) A reserve force member who is not a peace officer as described by Article 2.12, Code of Criminal Procedure, may act as a peace officer only during the discharge of official duties. A reserve force member who is a peace officer under that article must hold a permanent peace officer license issued under Chapter 1701, Occupations Code.

(g) The commission must approve an appointment to the reserve force before the person appointed may carry a weapon or otherwise act as a peace officer. On approval of the appointment of a person who is not a peace officer as described by Article 2.12, Code of Criminal Procedure, the person appointed may carry a weapon only when authorized to do so by the chief of police and only when discharging official duties as a peace officer. On approval of the appointment of a person who is a peace officer as described by Article 2.12, Code of Criminal Procedure, the chief of police may:

(1) authorize the person appointed to carry a weapon or act as a peace officer at all times, regardless of whether the person is engaged in the discharge of official duties; or

(2) limit the person's authority to carry a weapon or act

as a peace officer to only those times during which the person is engaged in the discharge of official duties.

(h) Reserve police officers may act only to supplement the district's regular police force and may not assume the full-time duties of regular police officers without complying with the requirements for regular police officers.

(i) A reserve police officer, regardless of whether the reserve police officer is a peace officer as described by Article 2.12, Code of Criminal Procedure, is not:

(1) eligible for participation in:

(A) a program provided by the commission that is normally considered a financial benefit of full-time employment; or

(B) a pension fund created by statute for the benefit of full-time paid peace officers; or

(2) exempt from Chapter 1702, Occupations Code.

(j) After being appointed under this section, a reserve police officer must execute an oath and execute a bond in the amount of $2,000 payable to the commission. The officer may not perform any duties under this section until the officer files the oath and bond with the commission's secretary.

Added by Acts 2005, 79th Leg., Ch. 173 (H.B. 340), Sec. 1, eff. May 27, 2005.

Sec. 60.078. PENALTIES. A violation of this subchapter or of an ordinance, rule, or regulation adopted by a district under this subchapter is a misdemeanor, and the commission may provide for the punishment of the misdemeanor by a fine of not more than $500 for each offense or violation.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2005, 79th Leg., Ch. 758 (H.B. 2966), Sec. 1, eff. September 1, 2005.

Sec. 60.079. JURISDICTION OF VIOLATIONS. Any justice court in the justice precinct in which an offense under this subchapter is alleged to have been committed or in any county court at law in the county where an offense is alleged to have been committed, which

county court at law has concurrent original jurisdiction with the justice court, shall have original jurisdiction of any misdemeanor or violation under this subchapter and original jurisdiction of any violation of an ordinance, rule, or regulation made under this subchapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER E. POWERS OF DISTRICTS FOR IMPROVEMENT OF PORT FACILITIES

Sec. 60.101. ACQUISITION AND MAINTENANCE OF PORT FACILITIES. (a) Any district may acquire land or interests in land by purchase, lease, or otherwise, may convey the land or interest in the land by lease, installment sale, or otherwise, and may purchase, construct, enlarge, extend, repair, maintain, operate, develop, sell by installment sale, or otherwise, and lease as lessor or as lessee:

(1) wharves and docks;

(2) warehouses, grain elevators, other storage facilities, and bunkering facilities;

(3) port-related railroads and bridges;

(4) floating plants and facilities;

(5) lightering, cargo-handling, and towing facilities;

(6) everything appurtenant to these facilities; and

(7) all other facilities or aids incidental to or useful in the operation or development of the district's ports and waterways or in aid of navigation and navigation-related commerce in the ports and on the waterways.

(b) To the extent that the district incurs indebtedness, bonded or otherwise, for purposes of financing the above facilities which in turn are sold by installment sale or otherwise, the indebtedness, principal and interest, may be paid only from the loan or bond sale proceeds and from revenues generated from the project financed by the indebtedness, and security for payment of the principal of and interest on indebtedness shall be limited to a pledge of the project's revenues and the project's facilities including enlargements and additions.

(c) An installment sale or a lease under this section is not a loan of the district's credit or a grant of public money. The acquisition and leasing of land and facilities for the purposes included in this section and the operation and industrial and

business development of ports and waterways are a public purpose and a matter of public necessity.

(d) A district may contract with a broker to sell a tract of land in the same manner as the commissioners court of a county under Section 263.008, Local Government Code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1983, 68th Leg., p. 411, ch. 84, Sec. 1, eff. May 10, 1983.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 8, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 6, eff. June 1, 2017.

Sec. 60.102. UTILITY RELOCATION. (a) If a district in the exercise of the powers conferred by this subchapter or in the exercise of the power of eminent domain or the police power requires the relocating, raising, lowering, rerouting, or changing in grade, or altering in the construction of any railroad, electric transmission line, telegraph or telephone line, conduit, pole, properties or facilities, or pipeline, the relocating, raising, lowering, rerouting, changing in grade, or altering of construction shall be done at the sole expense of the district.

(b) "Sole expense" means the actual cost of the relocation, raising, lowering, rerouting, change in grade, or alteration of construction in providing comparable replacement without enhancement of the facilities, after deducting the net salvage value derived from the old facility.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.103. PRESCRIBING FEES AND CHARGES. The commission shall prescribe fees and charges to be collected for the use of the land, improvements, and facilities of the district and for the use of any land, improvements, or facilities acquired under the provisions of this subchapter. The fees and charges shall be reasonable, equitable, and sufficient to produce revenue adequate to pay the expenses mentioned in Section 60.105 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.104. POWER TO BORROW MONEY. (a) The commission, for the purposes stated in Subsection (b) of this section, may borrow money from the United States or from any other source and may evidence the debt by issuing notes, warrants, certificates of indebtedness, negotiable bonds, or other forms of obligation of the district payable solely out of the revenue to be derived from land, improvements, and facilities.

(b) The commission may use the money to acquire land and waterways and all improvements on or to the land and waterways and to acquire, purchase, construct, enlarge, extend, repair, maintain, operate, or develop wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants and facilities, lightering and towing facilities, everything appurtenant to them, and all other facilities or aids incidental to or useful in the operation or development of the district's ports and waterways or in the aid of navigation and commerce in the ports and waterways.

(c) Obligations issued under this subchapter shall not constitute an indebtedness or pledge of credit of the district and may not be paid in whole or in part from any funds raised or to be raised by taxation. Each obligation shall contain a recital to this effect.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.105. EXPENSES TO BE PAID FROM CURRENT REVENUES. (a) The commission shall pay from revenue raised under Section 60.103 of this code:

(1) all expenses necessary to the operation and maintenance of the improvements and facilities, including the cost of the acquisition of properties and materials necessary to maintain the improvements and facilities in good condition and operate them efficiently, the wages and salaries paid to the employees of the district, and other expenses necessary to the efficient operation of the improvements and facilities;

(2) the annual or semiannual interest on any obligations issued under this subchapter and payable out of the revenue of the

improvements and facilities; and

(3) the amount required to be paid annually into the sinking fund for the payment of any obligations issued under this subchapter and payable out of the revenue of the improvements and facilities.

(b) No expenses other than those authorized by Subsection (a) of this section may be paid from the revenue of the improvements and facilities as long as the principal and interest on any obligations issued under this subchapter remain outstanding and unpaid. Any revenue received in excess of that required for the purposes stated in Subsection (a) of this section may be used by the commission to pay the cost of improvements and replacements which are not listed and may establish a depreciation fund.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.106. PLEDGE OF REVENUE FOR PAYMENT OF OBLIGATIONS. (a) In proceedings to authorize the issuance of obligations under this subchapter, the district may make the obligations payable from and secured by the pledge of all or part of the revenue derived from the ownership or operation of the land, improvements, facilities, or other properties of the district, exclusive of revenue derived from taxation or assessments, or payable from and secured by the pledge of only revenue which may be derived from the ownership or operation of the land, improvements, facilities, or properties acquired with the proceeds of the sale of the obligations.

(b) The obligations may be issued in more than one series and at any time at which they may be required for carrying out the purposes of the district.

(c) Any pledge of revenue may reserve the right under conditions, specified in the pledge, to issue additional obligations which will be on a parity with, senior to, or subordinate to the obligations then being issued.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.107. MORTGAGE AS ADDITIONAL SECURITY. (a) As additional security for the payment of any obligations issued under this subchapter, the commission may execute in favor of the holders

of the obligations an indenture, mortgaging and encumbering the improvements, facilities, and properties acquired with the proceeds of the sale of the obligations. The commission may provide in the indenture for a grant to any purchaser, at a foreclosure sale under the indenture, a franchise to operate the improvements, facilities, and properties for a term of not more than 50 years from the date of purchase, subject to all regulatory laws.

(b) The indenture may contain the terms and provisions the commission considers proper and shall be enforceable in the manner provided by the laws of this state for the enforcement of other mortgages and encumbrances.

(c) Under any sale ordered pursuant to the provisions of an indenture, the purchaser and his successors or assigns shall be vested with a permit and franchise to maintain and operate the improvements, facilities, and properties purchased at the sale and shall have the same powers and privileges as could previously have been exercised by the district in the operation of the improvements, facilities, and properties. The purchaser or his successors and assigns may remove all or part of the improvements, facilities, and properties for diversion to other purposes.

(d) Any laws of this state relating to the granting of franchises are not applicable to either the granting of any franchise or authorizing or executing of any mortgage or encumbrance entered into pursuant to the provisions of this subchapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.108. ISSUANCE OF OBLIGATIONS. (a) The commission may provide that obligations issued under this subchapter are payable annually or semiannually and may issue the obligations in any denominations and may have them mature serially or at one time not more than 40 years from their date.

(b) The obligations shall be signed by the chairman and secretary of the commission, and the interest coupons attached to the obligations may be executed with the facsimile signatures of these officers. The obligations shall be valid and sufficient for all purposes even though the officers whose signatures are on the obligations or coupons cease to be officers before delivery to the purchaser.

(c) Any obligations issued under this subchapter shall be in registered or coupon form, and if the obligations are in coupon form, they may be registered with relation to principal only or with relation to both principal and interest.

(d) The commission may sell the obligations in the manner and at the time which it considers expedient and necessary to the interests of the district.

(e) The commission may make principal and interest on the obligations payable at any place or places inside or outside the State of Texas and may make the obligations redeemable before maturity at the premium determined by the commission.

(f) Each issue of obligations authorized under this subchapter shall constitute a separate series which shall be appropriately designated. These obligations constitute negotiable instruments within the meaning of the negotiable instruments law.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.109. SINKING FUND. (a) A resolution or an order authorizing the issuance of obligations under this subchapter shall provide for the creation of a sinking fund which shall include sums fully sufficient to pay principal of and interest on the obligations. Money deposited in the sinking fund shall be taken from revenue pledged for the payment of the obligations and shall be deposited in the fund as the revenue is collected.

(b) The money in the sinking fund shall be applied solely to the payment of interest on the obligations for the payment of which the fund is created and for the retirement of the obligations at or before maturity in the manner provided by this subchapter.

(c) The commission, at the time obligations are authorized under this subchapter, may provide that all money in the sinking fund which is in excess of the amount required for the payment of the principal of and interest on the outstanding obligations, for a period of time it may determine, shall be spent once each year pursuant to the commission's orders for the purchase of obligations, if any can be purchased at a price the commission finds reasonable, for the account of which the sinking fund has been accumulated.

(d) If the obligations contain an option permitting retirement before maturity, the commission may provide that the excess sums

shall be paid out as authorized by Subsection (b) of this section for the purchase of the obligations, but if the commission is unable to purchase sufficient obligations of the issue to absorb all the surplus, it shall call a sufficient amount of the obligations for redemption to absorb insofar as practicable the entire surplus remaining in the sinking fund.

(e) The commission may provide that any excess in the sinking fund which cannot be applied to the purchase or redemption of obligations shall remain in the sinking fund for payment of principal and interest and for subsequent call for purchase or redemption.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.110. REVENUE SET ASIDE FOR SINKING FUND. (a) A resolution or an order authorizing the issuance of obligations under this subchapter shall provide that the revenue from which the obligations are to be paid shall, from month to month as it accrues and is received, be placed in a sinking fund and disbursed in the manner provided in Section 60.109 of this code.

(b) In determining the amount of revenue to be set aside, the commission shall provide that the amount to be set aside and paid into the fund in any year shall not be less than a fixed sum which shall be at least sufficient to provide for the payment of the principal of and interest on all obligations which mature and become payable each year and shall include a surplus or margin of 10 percent in excess of that amount.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.111. DEPOSIT OF PROCEEDS OF OBLIGATIONS; PAYMENT. (a) The proceeds of the sale of any obligations issued under this subchapter may be deposited in a bank or banks and paid out on terms and conditions agreed on by the purchaser at the sale and the commission.

(b) The laws of this state relating to the deposit of district funds in the depository of the district shall not apply to the deposit of the proceeds of a sale governed by Subsection (a) of this section.

(c) Any part of the proceeds of the sale of obligations issued

under this subchapter which remains unspent after the project for which the obligations were authorized has been completed may be paid into the sinking fund for the payment of the obligations and may be used only for the payment of principal of the obligations or for the purpose of purchasing outstanding obligations in the manner provided by this subchapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.112. INSURING IMPROVEMENTS TO PROTECT HOLDERS OF OBLIGATIONS. (a) The commission may enter into agreements with purchasers of any obligations issued under this subchapter to insure improvements and facilities, the revenue of which is pledged to the payment of the obligations.

(b) The commission may obtain from insurers of good standing:

(1) insurance against loss or damage by fire, water, or flood;

(2) insurance against loss or damage from any hazards customarily insured against by private companies operating similar properties; and

(3) insurance covering the use and occupancy of the property as is customarily carried by private companies.

(c) The cost of the insurance shall be budgeted as maintenance and operation expense and shall be carried for the benefit of the holders of the obligations.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.113. COMPELLING PERFORMANCE OF DUTIES. A holder of obligations issued under this subchapter or coupons originally attached to the obligations may by any legal proceeding enforce and compel performance of all duties required by this subchapter to be performed by the commission. The duties which can be the basis of an action under this section shall include:

(1) the establishment and collection of reasonable and sufficient fees or charges for the use of improvements and facilities of the district;

(2) the segregation of the income and revenue from improvements and facilities; and

(3) the application of income and revenue pursuant to the provisions of this subchapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.114. OBLIGATIONS EXEMPT FROM TAXATION. Any obligations issued under this subchapter shall be exempt from taxation by the State of Texas, any municipal corporation, any county, and or any other political subdivision or taxing district of the state.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.115. REFUNDING OBLIGATIONS. (a) A district issuing obligations under the provisions of this subchapter may authorize issuance of its refunding obligations on terms its commission considers advisable for the purpose of providing for the retirement of outstanding obligations which are either due or to become due.

(b) The refunding obligations either may be exchanged for the same par amounts of outstanding obligations or may be sold and the proceeds of the sale exchanged for the same par amounts of outstanding obligations.

(c) Refunding obligations authorized and issued under Subsection (a) of this section are subject to the provisions of this subchapter relating to the issuance of other obligations and shall be secured in all respects to the same extent and shall be payable from the same revenue as the obligations which they refund.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.116. APPROVAL AND REGISTRATION OF BONDS. (a) Bonds issued under this subchapter shall be submitted to the Attorney General of Texas for his approval in the same manner and with the same effect as provided for the approval of tax bonds issued by counties of the state.

(b) Bonds issued under this subchapter shall be registered by the Comptroller of Public Accounts of Texas as required for county tax bonds.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.117. BONDS AS INVESTMENTS. Bonds authorized and issued under this subchapter are legal and authorized investments for life insurance companies authorized to do business in Texas.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.118. BOARD OF TRUSTEES OF FACILITY. (a) A district which constructs, purchases, or otherwise acquires or plans to construct, purchase, or otherwise acquire any facility authorized in Section 60.101 of this code to be paid for in whole or in part by the issuance and sale of obligations payable from and secured by a pledge of revenue authorized in this subchapter may vest management and control of the facility during the time the obligations or refunding obligations are secured in whole or in part by the pledge of revenue, in a board of trustees named in the resolution or indenture.

(b) The board of trustees shall consist of not less than five nor more than nine members, and shall be entitled to receive the compensation fixed by the resolution or indenture, which shall not be more than one percent of the gross receipts of the facility in any one year.

(c) The commission shall specify in the resolution or indenture:

(1) the terms of office of the members of the board of trustees;

(2) the powers and duties of the board, including the power to fix fees and charges for the use of the facility;

(3) the manner of exercising the powers and duties;

(4) the manner of selecting the successors of the board of trustees; and

(5) all matters relating to board members' duties and the organizing of the board.

(d) The board of trustees may adopt bylaws regulating the procedure of the board and fixing the duties of its officers, but the bylaws may not contain any provision in conflict with the covenants and provisions contained in the resolution authorizing the bonds or in the indenture.

(e) In all matters relating to powers, duties, obligations, and procedure of the board of trustees which are not covered in the bylaws and the resolution or indenture, the laws and rules governing the commission shall control, where applicable.

(f) When the board is created by the resolution or indenture, it shall have all of the power and authority for the management and operation of any facility which could be exercised by the commission.

(g) By the terms of the resolution or indenture, the commission may make provision for later supplementation of the resolution or indenture to vest the management and control of the facility in a board of trustees having the powers, rights, and duties conferred or imposed by this section.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1971, 62nd Leg., p. 1159, ch. 264, Sec. 1, eff. May 19, 1971.

Sec. 60.119. COVENANTS FOR MANAGEMENT AND OPERATION OF IMPROVEMENTS. (a) A resolution or order authorizing the issuance of obligations under this subchapter may include covenants with the holders of the obligations relating to:

(1) the management and operation of the improvements and facilities;

(2) the collection of fees and charges for the use of the improvements and facilities;

(3) the disposition of the fees and charges;

(4) the issuance of future obligations and creation of future liens and encumbrances against the improvements, facilities, and the revenue from them; and

(5) other pertinent matters, as may be deemed necessary to insure the marketability of the obligations.

(b) The covenants shall not be inconsistent with the provisions of this subchapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.120. CONTRACTS, LEASES, AND AGREEMENTS AUTHORIZED. (a) A district acting under this subchapter may enter into any contract, lease, or agreement necessary or convenient to carry out any of the

powers granted in this subchapter, including a contract for purchase, lease for purchase, or other agreement for the use or acquisition of real property, or improvements to real property or the use or acquisition of personal property. The contract, lease, or agreement may be entered into with any person and any government or governmental agency including the United States, the State of Texas, and a public facility corporation organized under Chapter 303, Local Government Code.

(b) Any contract, lease, or agreement entered into under Subsection (a) of this section shall be approved by resolution of the commission and shall be executed by the chairman, the executive director of the district, or an authorized representative of the executive director.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1330 (S.B. 1531), Sec. 3, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 9, eff. June 17, 2011.

Sec. 60.121. CONVERSION OF DISTRICT. (a) If the commission of any district organized under Article III, Section 52, of the Texas Constitution, finds it expedient to convert the district into a district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, in order to utilize the provisions of this subchapter, the conversion may be accomplished as provided in Subchapter J of this chapter.

(b) All proceedings and hearings held in connection with a conversion shall be adopted and conducted by the commission of the district instead of by the navigation board of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.122. IMPROVEMENTS NOT PAYABLE FROM TAXES. (a) No district, in the operation, maintenance, or repair of any improvements or facilities acquired, purchased, or constructed under the provisions of this subchapter, shall incur any indebtedness or assume any liability or obligation payable out of taxes.

(b) Liabilities and obligations arising from these activities are payable solely out of the revenue from the improvements and facilities which may be applicable as authorized in this subchapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.123. PILOT AND PILOTAGE LAWS UNAFFECTED. No provision of this subchapter may be construed to amend, repeal, or affect the laws relating to pilots and pilotage or their appointment and remuneration.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.124. GIFTS, GRANTS, AND DONATIONS. A district may accept a gift, grant, donation, or bequest of money, services, equipment, goods, or other tangible or intangible property from any source for any district purpose.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 10, eff. June 17, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 7, eff. June 1, 2017.

SUBCHAPTER F. CONTRACTS WITH THE UNITED STATES

Sec. 60.151. PURPOSE. It is the purpose and intent of this subchapter to confer on districts individually, jointly, or mutually interested in a navigation project, including a project relating to improvements and facilities described in Sections 60.032 and 60.101 of this code, the fullest possible power of contract with regard to navigation or other projects of individual or common interest.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1991, 72nd Leg., ch. 794, Sec. 1, eff. June 16, 1991; Acts 2003, 78th Leg., ch. 588, Sec. 5, eff. June 20, 2003.

Sec. 60.152. AUTHORITY TO ENTER INTO CONTRACT. (a) One or

more districts, which are interested in or may, in the judgment of the commission, be benefited by a navigation or other project, may enter into contracts with the United States or with another district, or both, to consummate navigation or other projects of common interest.

(b) The contract may provide for:

(1) the assumption of several, joint, or joint and several liability for construction, completion, and consummation of the project;

(2) the acquisition of property in connection with the project;

(3) the lending and contribution of funds of the district to the United States or to any other district in support or in aid of the project;

(4) the issuance of bonds or notes by one or more of the districts to fund all or part of the project;

(5) the obligation of one or more of the districts to fully or partially reimburse another district that has spent its own funds on the project or has issued bonds or notes to fund the project;

(6) the securing of bonds or notes issued by one district to fund the project with a pledge of payments to be made by one or more of the other districts; and

(7) the assumption of responsibility for valid obligations, incurred in furtherance of the common project, of the United States or of any district.

(c) A contract may provide that a district will make payment under the contract from proceeds from the sale of bonds or notes, from taxes, or from any other income of the district or any combination of these. A district may make payments under a contract from taxes other than maintenance taxes, after the provisions of the contract have been approved by a majority of the electors voting at an election held for that purpose. A contract election may be held alone or at the same time and in conjunction with an election to authorize bonds. The procedure for calling the election, giving notice, conducting the election, and canvassing the returns is the same as the procedure for a bond election. If the contract is approved, it constitutes an obligation against the taxing power of the district to the extent provided in the contract.

(d) A district all or part of which is in another district may exercise the authority granted a district under this section.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1991, 72nd Leg., ch. 794, Sec. 2, eff. June 16, 1991; Acts 2003, 78th Leg., ch. 588, Sec. 6, eff. June 20, 2003.

Sec. 60.153. EXECUTION OF CONTRACTS. A contract entered into by a district under this subchapter shall be approved by resolution of the commission and executed by the presiding officer of the commission, the executive director of the district, or an authorized representative of the executive director.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1330 (S.B. 1531), Sec. 4, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1191 (H.B. 3785), Sec. 2, eff. June 19, 2009.

SUBCHAPTER G. POWERS OF DISTRICT TO PROVIDE IMPROVEMENTS WITHOUT TAXATION

Sec. 60.171. AUTHORITY TO BORROW MONEY AND ENCUMBER PROPERTY AND FRANCHISE. (a) A district organized under the provisions of the constitution or laws of this state and created for the development of deep water navigation may borrow money and may mortgage and encumber part or all of its properties and facilities, the franchise, revenue, and income from the operation of its properties and facilities and everything pertaining to its properties and facilities to secure the payment of funds to purchase, build, improve, enlarge, extend, or repair any of its wharves, docks, warehouses, levees, bulkheads, canals, waterways, or other aids to navigation.

(b) As additional security, the encumbrance may pledge the net income and revenue from the operation of properties and facilities of the district and may provide for a grant, to a purchaser under sale or foreclosure, of a franchise to operate, subject to all regulatory laws, the encumbered property and facilities for a term of not more than 20 years from the date of purchase.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.172. NOTICE OF HEARING ON INDEBTEDNESS. (a) When, for the purposes authorized by Section 60.171 of this code, a commission proposes to borrow money and mortgage and encumber any part or all of its properties, facilities, franchises, revenue, and income from the operation of its properties and facilities, the commission shall give notice of intention to authorize and issue the evidence of the indebtedness.

(b) The commission shall fix a time and place at which a public hearing concerning the proposed indebtedness shall be held. The date of the hearing shall be not less than 15 days nor more than 30 days from the date of the resolution of the commission giving the notice.

(c) Notice published by the commission under this section shall:

(1) include a statement of the amount and purpose of the proposed indebtedness;

(2) inform all persons of the time and place of hearing; and

(3) inform all persons of their right to appear at the hearing and contend for or protest the creation of the indebtedness.

(d) The secretary of the commission shall post copies of the notice for 10 days before the day of hearing in three public places in the district and at the door of each county courthouse located in the district.

(e) The notice also shall be published one time not less than five days before the day of the hearing in a newspaper of general circulation in the district. If a newspaper is not published in the district, the notice shall be published in some newspaper published in any county situated in whole or in part within the district.

(f) The duties imposed on the secretary of the commission by this section may be performed by any commission member or the assistant secretary of the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.173. HEARING ON INDEBTEDNESS. (a) At the time and place set for the hearing or on a subsequent date, the commission shall hear and determine all matters concerning the proposed indebtedness, and the hearing may be adjourned from day to day and from time to time as the commission considers necessary.

(b) At the hearing, any person interested may appear before the commission in person or by attorney and contend for or protest the creation of the proposed indebtedness.

(c) The commission may adopt a resolution or order providing for the assumption of the proposed indebtedness and the issuance of the evidence of the indebtedness if at the hearing it is determined by the commission that the proposed improvements are necessary, feasible, practicable, and needed and will benefit the property in the district.

(d) The commission may, in respect to the issuance, sale, and delivery of securities evidencing the indebtedness, adopt all necessary resolutions, orders, certificates, and trust indentures.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.174. ISSUANCE OF OBLIGATIONS. (a) The district may issue evidences of indebtedness secured by encumbrance which mature not more than 20 years after the date of issuance.

(b) The encumbrance and evidences of indebtedness shall include the clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.175. EXECUTION AND SALE OF OBLIGATIONS. (a) Each note, warrant, or other security evidencing any indebtedness created under the provisions of this subchapter shall be signed by the chairman of the commission, countersigned by the secretary of the commission, and have the seal of the district impressed on it.

(b) Each note, warrant, or other security may be registered as to principal by the trustee named and designated by the commission in the trust indenture executed by the commission to secure payment of the obligation.

(c) The evidences of indebtedness may be sold by the commission on the best terms and for the best price possible.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.176. OBLIGATIONS AS CHARGE ON ENCUMBERED PROPERTY AND FACILITIES. (a) No obligation issued under Section 60.174 of this code shall be a debt of the district issuing the obligation but shall be solely a charge on the encumbered property and facilities.

(b) Revenue and income from the encumbered property and facilities of the district shall not be considered in determining the power of the district to issue any bonds for any purpose authorized by law.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.177. LIEN ON REVENUE; FORECLOSURE OF ENCUMBRANCE. (a) If the revenue and income from the properties and facilities of the district are encumbered under the provisions of this subchapter, the expense of operation and maintenance necessary to render efficient service of the properties and facilities shall be a first lien and charge against the revenue and income. The first lien shall be prior to and superior to the lien of the encumbrance.

(b) No encumbrance shall be foreclosed because of default of the district until the default has existed for a period of 90 days and notice of the default has been served on the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.178. TRUSTEE TO ENFORCE FORECLOSURE; FRANCHISE UNDER FORECLOSURE. (a) The encumbrance may provide for a trustee to enforce foreclosure.

(b) In the event of foreclosure of an encumbrance created under this subchapter, the encumbrance may provide for the grant of a franchise to the purchaser under foreclosure to operate the properties encumbered for a period not to exceed 20 years from the date of default. The district shall have the option at any five-year period for 20 years after default to repurchase the properties on reasonable terms and at reasonable prices to be set forth in the encumbrance.

(c) The provisions of Sections 61.164-61.168 of this code, relating to the grant of franchises by districts, shall not apply to the grant of any franchises under authority of this section.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.179. BORROWING FOR CURRENT EXPENSES. The district may borrow funds and issue warrants to pay current expenses. The warrants issued shall be payable not later than the close of any calendar year for which loans are made and may not exceed in total the anticipated revenue of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.180. MANAGEMENT AND CONTROL BY COMMISSION. The management and control of any property and facilities encumbered under the provisions of this subchapter shall, during the time of the encumbrance, be exercised by the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.181. PROCEEDINGS TO BORROW MONEY. (a) The commission shall supervise all proceedings to be taken and acts to be performed under this subchapter concerning the borrowing of money, the mortgaging and encumbering of properties and facilities, the franchise, revenue, and income from the operation of properties and facilities, and the issuance of evidences of indebtedness.

(b) The commissioners court of any county included in whole or in part inside the boundaries of a district and the navigation board established for a district shall not be required to take any action in connection with this subchapter, approve or ratify any proceedings taken by the commission, or approve or ratify any act performed by the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER H. PROMOTION AND DEVELOPMENT FUND IN CERTAIN DISTRICTS

Sec. 60.201. PURPOSE. Districts in this state which operate ports or waterways and harbor and terminal facilities are in keen competition with other ports, waterways, harbors, and terminals outside the state and with privately owned port and terminal

facilities inside the state. Well-situated and well-equipped ports and waterways in other nearby states and owners of substantial port and terminal facilities located inside and outside the state are advertising, promoting and developing their competing ports, waterways, harbors, and terminals through expenditure of large amounts of money without any audit or restriction on expenditure of the money. This activity or expenditure is thwarting and impeding the use, progress, and development of the ports, waterways, harbors, and terminals of this state. Continuation of this hardship and injustice can best be met and coped with by more liberal use of some relatively small fund set aside from the gross income from operations of the ports of this state to be used in the manner provided in this subchapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1993, 73rd Leg., ch. 114, Sec. 1, eff. Aug. 30, 1993.

Sec. 60.202. CREATION OF FUND. A district organized under general or special law may set aside out of current income from its operations a promotion and development fund of not more than five percent of its gross income from operations in each calendar year.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1993, 73rd Leg., ch. 114, Sec. 1, eff. Aug. 30, 1993.

Sec. 60.203. EXPENDITURE OF FUND. Money in the promotion and development fund shall be spent by the commission or as the commission may direct to pay any expenses connected with:

(1) any activity or matter incidental to the advertising, development, or promotion of the district or its ports, waterways, harbors, or terminals;

(2) furthering the general welfare of the district and its facilities; or

(3) the betterment of the district's relations with steamship and rail lines, shippers, consignees of freight, governmental officials, or others interested or sought to be interested in the ports, waterways, harbors, or terminals.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.204. MANAGEMENT AND CONTROL OF PROMOTION AND DEVELOPMENT FUND. (a) The money in the promotion and development fund shall be kept separate from all other funds and accounts of the district, and no money collected from assessing or levying taxes may be mingled with the fund.

(b) The promotion and development fund shall be under the exclusive control of the commission, and the commission shall have full responsibility for auditing, approving, and safeguarding the expenditure of money from the fund.

(c) The county auditor shall exercise his usual supervision and control to assure that the commission sets aside no more than five percent of its gross income from operations in each calendar year in the promotion and development fund. The county auditor may audit disbursements from the fund and shall be entitled to a monthly statement showing the:

(1) date of each disbursement from the fund;

(2) amount disbursed;

(3) person or concern to whom disbursed; and

(4) general purpose of each disbursement.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 2001, 77th Leg., ch. 183, Sec. 1, eff. May 18, 2001.

Sec. 60.205. OTHER EXPENSES NOT AFFECTED. Since this subchapter authorizes disbursements from the promotion and development fund for unusual purposes and occasions not covered by other law, the setting aside of the fund and disbursements from the fund shall not affect payment of other expenses customarily approved, audited, and paid out of the regular funds of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER I. REVENUE BONDS

Sec. 60.221. MODIFICATION OF REVENUE BOND RESOLUTION. If a district adopts a resolution for the issuance of revenue bonds, provision may be made in the resolution for its modification after the issuance of the bonds in the manner and with the consent of the

holders of a fixed percentage of the bonds if provided in the resolution before the issuance of the bonds.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER J. CONVERSION OF DISTRICTS

Sec. 60.241. AUTHORITY TO CONVERT. Any district created under the provisions of Article III, Section 52, of the Texas Constitution may be converted into a district operating under Article XVI, Section 59, of the Texas Constitution, in the manner provided in this subchapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.242. RESOLUTION. (a) The navigation board shall adopt a resolution declaring that in its judgment conversion to a district operating under Article XVI, Section 59, of the Texas Constitution will be in the best interest of the district and will be a benefit to the land and property located in the district.

(b) The resolution shall call a hearing and shall be entered in the minutes of the board.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.243. NOTICE OF RESOLUTION. (a) Notice of the resolution shall be given by publishing notice once a week for two consecutive weeks in a newspaper with general circulation in the county in which the district is located. The first publication shall appear not less than 14 full days before the time set for the hearing.

(b) The notice shall:

(1) state the time and place of the hearing;

(2) set out the entire resolution; and

(3) notify interested persons to appear and offer testimony for or against the proposal.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.244. FINDINGS. (a) After the hearing, if the navigation board finds that conversion to a district operating under Article XVI, Section 59, of the Texas Constitution, would be in the best interest of the district and would be a benefit to the land and property located in the district, it shall enter an order making these findings and the district shall become a district operating under Article XVI, Section 59, of the Texas Constitution.

(b) If at the hearing the navigation board finds that conversion of the district into a conservation and reclamation district operating under Article XVI, Section 59, of the Texas Constitution would serve the best interests of the district and would be a benefit to the land and property located in the district, it may, in the alternative to the procedures prescribed in Subsection (a) above, enter an order making this finding, but providing that conversion is not final unless the voters, in the election provided by Section 60.247 of this code, authorize the conversion of the district and the continuation of the existing authority of the district to levy an annual maintenance tax of not to exceed 10 cents on the $100 valuation of all property in this district.

(c) If the navigation board finds that conversion to a district operating under Article XVI, Section 59, of the Texas Constitution, would not be in the best interest of the district and would not be a benefit to the land and property located in the district, it shall enter an order making these findings.

(d) The findings of the navigation board are final and are not subject to appeal or review.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1983, 68th Leg., p. 4245, ch. 677, Sec. 1, eff. June 19, 1983.

Sec. 60.245. STATUS OF CONVERTED DISTRICT. A district which is converted under the provisions of this subchapter shall be constituted a district operating under Article XVI, Section 59, of the Texas Constitution and shall be governed by the provisions of Chapter 62 of this code as if it had originally been organized under Article XVI, Section 59, of the Texas Constitution, except the commissioners of a converted district shall be appointed in the manner that initial commissioners are appointed under Sections 62.061

and 62.062 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.246. POWERS OF CONVERTED DISTRICT. (a) Nothing in this subchapter shall be construed to deprive a converted district of any powers conferred on it by the law under which it was organized.

(b) A converted district shall have the additional powers conferred on districts under Sections 61.151, 61.161-61.168, 61.170, and 61.172-61.175 of this code, and the commissioners of a converted district shall constitute a pilot board under the provisions of Chapter 62, Transportation Code.

(c) If there is a conflict between the powers conferred by Section 60.245 of this code and the powers preserved by Subsection (a) of this section, the powers conferred by Section 60.245 shall control.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.278, eff. Sept. 1, 1997.

Sec. 60.247. OPTIONAL ELECTION. (a) If the navigation board finds in favor of the conversion of the district but pursuant to Subsection (b) of Section 60.244 of this code provides that the conversion is not final, the commissioners court of jurisdiction shall order an election to be held in the district and shall submit to the electors residing in the district the proposition of whether or not the district should be converted and should be authorized to continue to levy an annual tax for the maintenance, operation, and upkeep of the district of not to exceed 10 cents on the $100 valuation of all property within the district.

(b) The clerk of the commissioners court of jurisdiction shall give notice of the election by posting notices at the courthouse door of the county in which the district is located and at four other public places in the district.

(c) If the district is composed of more than one county, the notices required by Subsection (b) of this section shall be posted in each county.

(d) The notices must be posted for 30 days immediately

preceding the time set for election.

(e) The notices must include:

(1) the time and place of the election;

(2) the proposition to be voted on; and

(3) a copy of the election order.

(f) The commissioners court by order shall define the voting precincts in the district and shall name convenient polling places in the precincts.

(g) Immediately after the election, the officers holding the election shall make returns of the results to the commissioners court of jurisdiction, and the commissioners court shall promptly canvass the returns at a regular or special session of the commissioners court following the election.

Added by Acts 1983, 68th Leg., p. 4246, ch. 677, Sec. 2, eff. June 19, 1983.

Sec. 60.248. EFFECT OF ELECTION. If the commissioners court finds that a majority of those voting at the election voted in favor of the proposition, the court shall declare the results of the election to be in favor of conversion of the district and the levy of the annual maintenance tax and shall enter the results in its minutes. If the commissioners court finds that a majority of those voting at the election voted against the proposition, it shall declare the results of the election to be unfavorable to the conversion of the district and shall enter the results in its minutes.

Added by Acts 1983, 68th Leg., p. 4246, ch. 677, Sec. 2, eff. June 19, 1983.

Sec. 60.249. EFFECT OF OPTIONAL CONVERSION. (a) If the conversion is approved by the voters, as provided in Sections 60.247 through 60.248 of this code, the district shall have the same right, power, and authority as is provided in Sections 60.245 through 60.246 of this code.

(b) The district may continue to levy taxes to fully carry out each purpose of its organization and for the payment of obligations and the maintenance and operation of the district without impairment

or change in any of its obligations.

(c) The district shall advise the Texas Natural Resource Conservation Commission of a conversion not later than the 45th day after the results of the election are canvassed by the commissioners court.

Added by Acts 1983, 68th Leg., p. 4246, ch. 677, Sec. 2, eff. June 19, 1983. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.332, eff. Sept. 1, 1995.

SUBCHAPTER K. DEPOSITORY

Sec. 60.271. SELECTION OF DEPOSITORY. (a) Except as provided by this section, the commission shall select a depository for the district in the same manner that a municipality selects a municipal depository under Chapter 105, Local Government Code.

(b) The commission in selecting the depository shall act in the same capacity and perform the same duties as the governing body of a municipality in selecting a municipal depository. The chairman of the commission shall act in the same capacity and perform the same duties as the mayor of a municipality. The treasurer of the district shall act in the same capacity and perform the same duties as the treasurer of a municipality.

(c) A bank, credit union, or savings association may not use personal bonds to secure district funds.

(d) Subchapter B, Chapter 2256, Government Code, does not govern the investment of district funds.

(e) Section 105.074(e), Local Government Code, applies to the designated officer of the district.

(f) The district shall adopt payment procedures consistent with Section 105.074(g), Local Government Code. The designated officer of a district may draw a check on a depository only on a warrant signed by the presiding officer and attested by the secretary of the district, or by a procedure adopted under this section.

(g) In this section, "designated officer" has the meaning assigned by Section 105.001, Local Government Code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1997, 75th Leg., ch. 1400, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 11, eff. June 17, 2011.

Sec. 60.272. DEPOSITORY BOND. The depository shall have all the powers and duties in the execution of a depository bond and in pledging of collateral in lieu of or in addition to a personal surety or surety company bond as provided by law for a county depository.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 60.273. TREASURER'S BOND. After the depository executes the bond and it is approved by the commission, the county treasurer shall be required to execute only such a bond as required by the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER L. REFUNDING BONDS

Sec. 60.301. AUTHORITY TO ISSUE REFUNDING BONDS. The governing body of any district may refund the bonded indebtedness of the district without a vote of the electors of the district in the manner provided by law for counties, cities, and towns and may refund the bonded indebtedness owned by the State Board of Education in the manner provided for independent school districts incorporated for free school purposes only.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER M. TAX BONDS, REVENUE BONDS, AND COMBINATION TAX AND REVENUE BONDS

Sec. 60.331. CLASSES OF BONDS AUTHORIZED. For the purpose of carrying out any one or more powers of a district, the governing body of any district may issue negotiable bonds of three general classes:

(1) bonds secured by ad valorem taxes;

(2) bonds secured solely by a pledge of all or part of the revenues accruing to the district, including but without limitation those received from sale of water, rendition of services, tolls,

charges, and from all sources other than ad valorem taxes;

(3) bonds secured by a combination pledge of revenues and taxes.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.332. ISSUANCE OF BONDS. (a) Any district may issue bonds provided in Subdivision (2), Section 60.331 of this code, by action of its governing body and without the necessity of an election.

(b) Bonds to be issued under Subdivisions (1) and (3), Section 60.331 of this code, can be issued only after authorization at an election held for that purpose throughout the territory comprising the district. The elections shall be conducted substantially in accordance with the procedure prescribed in the Election Code.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.333. FORM OF BONDS. (a) Bonds of the district shall be authorized by resolution adopted by the governing board and shall be signed by the presiding officer or assistant presiding officer, and attested by the secretary, and the seal of the district shall be impressed on them.

(b) Within the discretion of the district, as evidenced by the resolution, bonds may be issued bearing the facsimile signatures of the officers and the seal of the district may be lithographed or printed thereon.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.334. MATURITY OF BONDS. Bonds shall mature serially or otherwise within the period and at the times which may be prescribed in the resolution, but not to exceed a maximum of 50 years.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27,

1973.

Sec. 60.335. REGISTERED AND BEARER BONDS. The bonds may be registered as to principal or as to both principal and interest, and appropriate provisions may be inserted in the resolution authorizing the execution and delivery of bonds for the conversion of registered bonds into bearer bonds and vice versa.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.336. LOST AND DESTROYED BONDS. Provisions may be made in the bond resolution or trust indenture for the substitution of new bonds for those lost or mutilated.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.337. APPROVAL OF CONVERTED OR SUBSTITUTED BONDS. When bonds are approved by the attorney general and registered by the comptroller as prescribed in Section 60.345 of this code, it shall not be necessary to obtain the approval of the attorney general or registration by the comptroller of converted or substituted bonds.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.338. BONDS SECURED BY REVENUES. (a) Bonds secured wholly or in part by a pledge of the revenues of the district may be secured by all or that part of the revenues specified in the resolution authorizing the bonds or in the indenture securing the bonds.

(b) In making any pledge of the revenues, the right under the conditions specified to issue additional bonds which will be on a parity with, senior to, or subordinate to the bonds then being issued, may be expressly reserved.

(c) Within the discretion of the governing body, bonds may be

secured further by a lien on all or any part of the physical property of the district.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.339. BONDS PAYABLE FROM TAXES. Where bonds are issued payable wholly from taxes, it is the duty of the governing body at the time of the bonds authorization to levy a tax sufficient to pay the principal of and interest on the bonds as the interest and principal become due, and to provide the reserve funds if prescribed in the resolution authorizing or the trust indenture securing the bonds.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.340. BONDS PAYABLE FROM BOTH TAXES AND REVENUES. (a) Where the bonds are payable both from taxes and from revenues of the district a tax shall be levied at the time of the authorization of the bonds sufficient to pay the principal and interest and create and maintain the reserve funds.

(b) The rate of tax actually to be collected for any year shall be fixed so as to take into consideration the money which shall have been in the interest and sinking fund from the pledged revenues and which will be available for payment of principal and interest and for the creation of the reserve funds to the extent and in the manner permitted by the resolution authorizing or the trust indenture securing the bonds.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.341. RATES, TOLLS, AND CHARGES. (a) Where bonds are payable wholly from revenues, the governing body shall fix and from time to time revise the rates, tolls, and charges from the sales and services rendered by the district, the revenues from which are pledged, to the end that the rates, tolls, and charges will yield

sufficient money:

(1) to pay designated expenses of the district;

(2) to pay the principal of and interest on the bonds as the principal and interest mature; and

(3) to create and maintain funds as prescribed in the resolution authorizing or the trust indenture securing the bonds.

(b) Where the bonds are payable both from taxes and from revenues, the governing body shall fix and from time to time revise the rates, tolls, and charges for sales and services rendered by the district, to the extent pledged, which will be sufficient to assure compliance with the resolution authorizing the bonds or the trust indenture securing them.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.342. USE OF BOND PROCEEDS. (a) From the proceeds of the sale of any issue of bonds the district may set aside an amount for the payment of interest anticipated to accrue for the period specified or during the construction period and for a period after that time as the governing body may determine to be necessary and may provide for a deposit into reserves or the debt service fund to the extent prescribed in the resolution authorizing or the trust indenture securing the bonds.

(b) Proceeds from the sale of the bonds shall be used for the purposes for which the bonds were authorized and may be used for the payment of all expenses necessarily incurred in accomplishing the purposes for which the district is created, including the expense of issuing and selling the bonds.

(c) No expenditure of proceeds shall be made in violation of provisions contained in the resolution authorizing or the trust indenture securing the bonds.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.343. INTERIM BONDS. Pending the issuance of definitive bonds the governing body may authorize the delivery of negotiable interim bonds or notes eligible for exchange or substitution by use

of definitive bonds.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.344. REFUNDING BONDS. (a) The district is authorized to issue refunding bonds for the purpose of refunding any outstanding bonds and interest on them, authorized by this subchapter or any other indebtedness which the district may lawfully assume.

(b) No election shall be necessary in connection with the authorization and issuance of refunding bonds.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.345. APPROVAL AND INCONTESTABILITY OF BONDS. (a) No bonds shall be issued by the district until they shall have been approved by the attorney general.

(b) After the bonds have been approved by the attorney general and registered by the comptroller of public accounts they shall be negotiable and incontestable.

(c) When the bonds of an issue are thus approved and registered, the bonds later delivered by the district in lieu of these bonds, pursuant to Section 60.337 of this code in connection with the exchange of registered for unregistered bonds, or unregistered bonds for registered bonds, or in lieu of lost or mutilated bonds, need not be reapproved by the attorney general or reregistered by the comptroller of public accounts. Nevertheless, the bonds shall likewise be incontestable, and except for the limitations resulting from registration shall be negotiable.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.346. ADDITIONAL SECURITY. (a) Any bonds, including refunding bonds, authorized by this subchapter, and not payable wholly from ad valorem taxes, may be additionally secured by a trust indenture under which the trustee may be a bank having trust powers

which may be situated either inside or outside the State of Texas.

(b) The trust indenture may contain provisions prescribed by the governing body for the security of the bonds and the preservation of its properties, contracts, and rights. It may contain a provision for the amendment or modification of the trust indenture in the manner which it prescribes.

(c) Without limiting the generality of the provisions which may be contained in the indenture, it may provide that the district shall comply with the requirements of designated consulting engineers for the proper maintenance and operation of the district's properties and for the fixing of adequate tolls, charges, and rates, to assure proper maintenance and operation, and to provide proper debt service for the outstanding bonds in the manner prescribed in the resolution authorizing the issuance of the bonds or in the trust indenture securing the bonds.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.347. INVESTMENT OF BOND PROCEEDS. (a) The proceeds from the sale of any issue of bonds may, within the discretion of the board, be invested prior to their use for the purposes for which they were issued, in bonds or other direct obligations of, or obligations unconditionally guaranteed by, the United States or in certificates of deposit issued by banks as long as the certificates are secured by such obligations or may be invested in accordance with Subchapter A, Chapter 2256, Government Code.

(b) The investments may be sold pursuant to the directions of the governing body as and when needed for their use for the purposes for which the bonds were issued.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973. Amended by Acts 1989, 71st Leg., ch. 750, Sec. 3, eff. June 15, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(11), eff. Sept. 1, 1995.

Sec. 60.348. BONDS AS INVESTMENTS. (a) All bonds issued pursuant to this subchapter shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust

companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking fund of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas.

(b) The bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas and the bonds shall be lawful and sufficient security for the deposits to the extent of their face value, when accompanied by all unmatured coupons appurtenant thereto.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

Sec. 60.349. EFFECT OF SUBCHAPTER. This subchapter shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized by it, without reference to any other laws, or any restrictions or limitations contained therein, except as specifically provided in this subchapter. When any bonds are being issued under this subchapter, then to the extent of any conflict or inconsistency between any provisions this subchapter shall prevail and control; provided, that any issuer shall have the right to use the provisions of any other laws, not in conflict with the provisions of this subchapter, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this subchapter.

Added by Acts 1973, 63rd Leg., p. 770, ch. 343, Sec. 1, eff. Aug. 27, 1973.

SUBCHAPTER N. COMPETITIVE BIDDING REQUIREMENTS

Sec. 60.401. APPLICATION OF SUBCHAPTER. (a) This subchapter applies to a port authority district only if the port commission of that district or port authority by resolution adopts this subchapter.

(b) A district may adopt this subchapter for a particular purchase or period or for all purchases and contracts, subject to the commission's right to authorize particular procurements under

Subchapter O.

(c) Except as specifically provided by this subchapter, a district that adopts this subchapter is not subject to the purchasing requirements of other laws governing purchases by navigation districts and port authorities.

(d) Chapter 2269, Government Code, does not apply to this subchapter.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 3.08, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(37), eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 8, eff. June 1, 2017.

Sec. 60.402. DEFINITIONS. In this chapter:

(1) "Port authority" means a port authority created or operating under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.

(2) "Port commission" means the governing body of a navigation district or port authority.

(3) "Current funds" means funds in the treasury of a district or port authority that are available in the current tax year, revenue that may be anticipated with reasonable certainty to come into the treasury during the current tax year, and emergency funds.

(4) "Bond funds" means money in the treasury of a district or port authority received from the sale of bonds, and proceeds of bonds that have been voted but have not been issued and delivered.

(5) "Item" means any service, equipment, goods, or other tangible or intangible personal property, including insurance and high technology items.

(6) "High technology item" means a service, equipment, or goods of a highly technical nature, including data processing equipment and software and firmware used in conjunction with data processing equipment; telecommunications, radio, and microwave systems; electronic distributed control systems including building

energy management systems; and technical services related to those items.

(7) "Public works contracts" means a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property.

(8) "Purchase" means the acquisition of an item by a port authority, a contract for construction, or performance of services.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.

Sec. 60.403. CONTRACTS: PURCHASES. (a) A port commission, an authorized designated officer of the port commission, the executive director of the district or the port authority, or an authorized representative of the executive director may make routine purchases or contracts in an amount not to exceed $50,000.

(b) Before a purchase is made, a purchase order or other form of precommitment approval must be signed by the executive director of the district or the port authority or an authorized representative of the executive director. For routine contracts or purchases, the precommitment approval may be in the form of a list of approved routine purchases or contracts signed by the executive director. The signed list shall remain on file in the offices of the district or port authority.

(c) One original, photocopy, or electronic copy of the purchase order shall be delivered to the person from whom the purchase is made and one original, photocopy, or electronic copy shall be retained on file in the district or port authority in accordance with Subtitle C, Title 6, Local Government Code.

(d) If any other type of purchase of the district or port authority is subject to the approval of a county auditor, the list of routine purchases or contracts must be approved by the county auditor before the purchases or contracts may be made.

(e) A district may establish an electronic requisition system to perform some or all of the functions required by Subsections (b), (c), and (d). An electronic requisition system established under this subsection must electronically transmit data to and receive data from the financial system of the district in a manner that meets professional, regulatory, and statutory requirements and standards, including those relating to purchasing, auditing, and accounting.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.
Amended by Acts 1995, 74th Leg., ch. 632, Sec. 1, eff. June 14, 1995; Acts 1997, 75th Leg., ch. 262, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 588, Sec. 7, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1330 (S.B. 1531), Sec. 5, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 415 (H.B. 1972), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 12, eff. June 17, 2011.

Sec. 60.4035. CONTRACTS: EMERGENCY PURCHASES. (a) Notwithstanding the competitive bidding requirements and proposal procedures of this subchapter and Subchapter O and the requirements of Sections 60.408(a), (b), (c), (d), and (e), the executive director of a district or an officer of a district authorized in writing by the port commission may make emergency purchases or contracts or emergency amendments to existing purchase orders or contracts in an amount that exceeds the amount authorized under Section 60.403(a) for routine purchases or contracts if necessary:

(1) to preserve or protect the public health and safety of the residents of the district;

(2) to preserve the property of the district in the case of a public calamity;

(3) to repair unforeseen damage to the property of the district; or

(4) to respond to security directives issued by:

(A) the federal Department of Homeland Security, including the Transportation Security Administration;

(B) the United States Coast Guard;

(C) the federal Department of Transportation, including the Maritime Administration; or

(D) another federal or state agency responsible for domestic security.

(b) The executive director of a district or the authorized officer of the district shall notify the port commissioners of any purchase made under Subsection (a) not later than 48 hours after the purchase is made.

Added by Acts 2003, 78th Leg., ch. 588, Sec. 8, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 415 (H.B. 1972), Sec. 2, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1191 (H.B. 3785), Sec. 3, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 26.007, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 13, eff. June 17, 2011.

Sec. 60.404. COMPETITIVE BIDDING REQUIREMENTS. (a) If the materials, supplies, machinery, equipment, or other items to be purchased or contracted for are valued at an amount greater than the amount authorized under Section 60.403(a) for routine purchases or contracts, notice shall be published as provided by this section.

(b) A notice of proposed purchase and the time and place the bids will be received and opened must be published once a week for two consecutive weeks before the deadline for receiving the bids in a newspaper with general circulation in each county in which the district is located. If there is no newspaper of general circulation in a county in which the district is located, the notice shall be published in a newspaper of general circulation in the county nearest the county seat of the county in which the district is located or the county in which the greatest amount of the district's territory is located.

(c) The notice must include:

(1) the specifications as prescribed by Subsection (d) of this section or the location at which those specifications may be obtained;

(2) the time and place for receiving and opening bids;

(3) the name and position of the official or employee to whom the bids are to be sent;

(4) whether the purchase will be made on a lump-sum or unit-pricing basis or a combination of a lump-sum basis and a unit-pricing basis;

(5) if a unit-pricing basis is to be used, the information required by Section 60.409(b) of this code; and

(6) the type of bonds required of the bidder.

(d) The specifications must:

(1) describe in detail the item to be acquired;

(2) require that bids be sealed;

(3) require the attachment to the bid of a certified check, cashier's check, or bidders bond, if security is required in connection with the bid; and

(4) indicate whether a small business development program, local preference program, or other contracting program adopted by the district applies to the purchase and, if so, where a copy of the program requirements may be obtained.

(e) A certified check or cashier's check required under Subsection (d)(3) of this section must be drawn on a bank that is a member of the Federal Deposit Insurance Corporation. A bidders bond required by that subsection must be acceptable to and payable to the district or port authority in an amount that is five percent of the total amount of the bid, conditioned that the successful bidder will enter into a contract and give bond if required by the specifications or law.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1989, 71st Leg., ch. 1059, Sec. 1, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 757, Sec. 22, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 632, Sec. 2, eff. June 14, 1995; Acts 2003, 78th Leg., ch. 588, Sec. 9, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 415 (H.B. 1972), Sec. 3, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1191 (H.B. 3785), Sec. 4, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 26.008, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 14, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 9, eff. June 1, 2017.

Sec. 60.405. COMPETITIVE SEALED PROPOSALS. (a) Notwithstanding Section 60.404, items other than construction services valued at more than the amount authorized by Section

60.403(a) for routine purchases or contracts may be purchased under the procedure provided by this section.

(b) Quotations shall be solicited by the district or the district's broker through a request for proposals from as many sources as are reasonably available. The request for proposals must specify the relative importance of price and all other factors of evaluation.

(c) Public notice of the request for proposals must be made in the same manner as provided by Section 60.404.

(d) The award of the contract shall be made by the commission in open session to the responsible offerer whose proposal is determined to provide the best value to the district giving consideration to evaluation factors set forth in the request for proposals.

(e) If so provided in the request for proposals, information in proposals may not be disclosed to the public until the contract is awarded. After a contract is awarded, proposals shall be open for public inspection, except that information contained in a proposal identified as a trade secret or as confidential shall be kept confidential.

(f) A district may adopt rules relating to negotiations to be conducted with responsible offerers submitting proposals. Offerers must be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. Revisions to proposal and contract terms may be permitted after submission of a proposal and before award of the contract.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 10, eff. June 1, 2017.

Sec. 60.406. COMPETITIVE BIDDING AND PROPOSAL PROCEDURES REQUIRED FOR CERTAIN CONTRACTS. (a) Except as otherwise provided by Section 60.4035 or 60.412, before a district or port authority may purchase one or more items under a contract that will require an expenditure of more than the amount authorized under Section 60.403(a) for routine purchases or contracts, the port commission of that district or port authority must comply with the competitive

bidding requirements or proposal procedures provided by this subchapter or Subchapter O. All bids must be sealed.

(b) The competitive bidding and proposal requirements provided by this subchapter and Subchapter O apply only to contracts for which payment will be made from current funds or bond funds.

(c) In applying the competitive bidding procedures and proposal procedures, all separate, sequential, or component purchases of items ordered or purchased from the same supplier by the same officer, entity, or department, purchased with the intent of avoiding the requirements of this subchapter or Subchapter O, shall be treated as if they are part of a single purchase and a single contract.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1993, 73rd Leg., ch. 757, Sec. 23, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 632, Sec. 3, eff. June 14, 1995. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 415 (H.B. 1972), Sec. 4, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1191 (H.B. 3785), Sec. 5, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 26.009, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 15, eff. June 17, 2011.

Sec. 60.407. OPENING SEALED PROPOSALS AND BIDS. (a) An official of the district shall open the bids and competitive sealed proposals on the date specified in the notice. If an error is discovered in the original specifications or the nature of the item to be purchased requires an extension, the date may be extended.

(b) Opened bids and sealed proposals shall be kept on file and made available for public inspection.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 11, eff. June 1, 2017.

Sec. 60.408. CONTRACT AWARD. (a) The bids shall be presented

to the port commission in session.

(b) The port commission may award the contract to the responsible bidder submitting the lowest and best bid, or the port commission may reject any or all bids.

(c) If two responsible bidders submit the lowest and best bid, the port commission shall decide between the two bids by drawing lots in a manner prescribed by rule by the chairman of the port commission.

(d) A contract may not be awarded to a bidder who does not submit the lowest dollar bid meeting specifications unless, before the award, each person with a lower bid is given notice of the proposed award and an opportunity to appear before the port commission and present evidence concerning his responsibility.

(e) A contract valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts shall be awarded at a regularly scheduled or specially called meeting of the port commission.

(f) A contract valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts must be in writing, executed for the district or port authority by the district's or port authority's executive or designated officer or by an authorized designated employee of the district or port authority, and filed with the proper officer of the district or port authority.

(g) Before a contract valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts takes effect or is binding on a district or port authority, the appropriate financial officer of the district or port authority must certify that funds are or will be available to meet the contract when due.

(h) One original, photocopy, or electronic copy of a contract, requisition, or purchase order valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts must be delivered to the contractor and one original, photocopy, or electronic copy shall be retained on file with the district or port authority in accordance with Subtitle C, Title 6, Local Government Code.

(i) A purchase or contract valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts that is not in compliance with this subchapter is void and unenforceable.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1191 (H.B. 3785), Sec. 6, eff. June 19, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 16, eff. June 17, 2011.

Sec. 60.409. PRICING METHOD. (a) A purchase may be proposed on a lump-sum or unit-price basis or a combination of a lump-sum basis and a unit-price basis.

(b) If a district uses unit pricing in its notice, the information furnished proposers or bidders shall specify the approximate quantities estimated on the best available information or other quantities reasonably specified to permit comparison of proposals or bids, and the total contract amount may be based on estimated maximum quantities, but the compensation paid the bidder must be based on the actual quantities purchased.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 12, eff. June 1, 2017.

Sec. 60.410. CHANGES IN PLANS AND SPECIFICATIONS. (a) A port commission may change the plans, specifications, proposal, or quantities of items purchased after a contract has been awarded, but the total contract price may not be changed unless the cost can be paid from available funds.

(b) If a change order involves an increase or decrease in cost less than or equal to the amount authorized in Section 60.403(a) for routine purchases or contracts, a port commission may grant general authority to an employee to approve the change order. However, the original contract price may not be increased by more than 25 percent or decreased by 18 percent or more without the consent of the contractor.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1330 (S.B. 1531), Sec. 6, eff.

June 15, 2007.

Sec. 60.411. BOND REQUIREMENTS. (a) If a contract is for the construction of public works or a contract amount exceeds $50,000, the bid specifications or request for proposal may require the bidder to furnish a good and sufficient bid bond in the amount of five percent of the total contract price. A district or port authority may require that the bond be executed with a surety company:

(1) authorized to do business in this state; and

(2) listed on the United States Department of Treasury List of Approved Sureties.

(b) Not later than the 10th day after the date of the signing of a contract or issuance of a contract or purchase order, the bidder or proposal offerer shall furnish a performance bond to the district or port authority, if required by a district or port authority, for the full amount of the contract if the contract exceeds $50,000.

(c) If a contract is for $50,000 or less, a district or port authority may provide in the bid notice or request for proposal that money will not be paid to the contractor until completion and acceptance of the work or fulfillment of the purchase obligation to the district or port authority.

(d) Bidders or proposal offerers for contracts subject to Chapter 2253, Government Code, are required to furnish a bond as provided by that article, except that a district or port authority may require that the bond be executed with a surety company listed on the United States Department of Treasury List of Approved Sureties.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.
Amended by Acts 1993, 73rd Leg., ch. 170, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1191 (H.B. 3785), Sec. 7, eff. June 19, 2009.

Sec. 60.4115. NOTIFICATION OF SAFETY AND ENVIRONMENTAL RECORD OF CONTRACTOR. (a) A person that enters into a contract with a district or port authority shall provide, at the request of the district or port authority, notice to the district or authority of

any citation, notice of violation or penalty, or other similar document regarding a serious safety or environmental violation that the person received from an agency or department of this state or of the federal government. The notice must include:

(1) a general description of the conduct that resulted in the citation, violation, penalty, or similar sanction; and

(2) the document from the agency or department that provided notice to the person of the citation, violation, penalty, or similar sanction.

(b) A district or port authority may terminate a contract with a person if the district or authority determines that the person failed to give notice as required by Subsection (a) or misrepresented conduct that resulted in a citation, notice of violation or penalty, or similar sanction. The district or port authority shall compensate the person for services performed before the termination of the contract.

(c) This section applies to all purchasing methods available to a district or port authority.

Added by Acts 2003, 78th Leg., ch. 588, Sec. 10, eff. June 20, 2003.

Sec. 60.412. EXEMPTIONS. (a) A contract for a purchase is exempt from the competitive bidding requirements and proposal procedures of this subchapter and Subchapter O if a contract is for the purchase of:

(1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the district or port authority;

(2) an item necessary to preserve or protect the public health or the safety of the residents of the district or port authority;

(3) an item made necessary by unforeseen damage to the property of the district or port authority;

(4) a personal or professional service;

(5) any work performed and paid for by the day as the work progresses;

(6) any land or right-of-way;

(7) an item that can be obtained only from one source,

including:

(A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or natural monopolies;

(B) films, manuscripts, or books;

(C) public utility services; and

(D) captive replacement parts or components for equipment;

(8) any item necessary to secure a district or port authority during a period of heightened security as determined by:

(A) the federal Department of Homeland Security, including the Transportation Security Administration;

(B) the United States Coast Guard;

(C) the United States Bureau of Customs and Border Protection;

(D) the Federal Bureau of Investigation;

(E) the federal Department of Transportation, including the Maritime Administration; or

(F) another federal, state, or local agency; or

(9) an item from the United States, including any agency thereof, or from this state, including an agency of this state.

(b) If an item exempt under Subsection (a)(7) of this section is purchased, the person making the purchase must sign a statement as to the existence of only one source for the purchase and a district or port authority must enter the statement into the records of that purchase.

(c) A district or port authority shall comply with Chapter 2254, Government Code, in procuring professional services.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.
Amended by Acts 2003, 78th Leg., ch. 588, Sec. 11, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 426 (S.B. 1786), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1191 (H.B. 3785), Sec. 8, eff. June 19, 2009.

Sec. 60.4125. ALTERNATIVE METHODS FOR CERTAIN PURCHASES OR

CONTRACTS. (a) Notwithstanding the other provisions of this subchapter or any other law, a district or port authority may make a purchase or enter into a contract valued at more than the amount authorized in Section 60.403(a) for routine purchases or contracts by any method available to a school district, including all procedures and limitations, under Subchapter B, Chapter 44, Education Code, that, in the opinion of the port commission, provides the best value to the district or port authority.

(b) Repealed by Acts 2003, 78th Leg., ch. 307, Sec. 2.

(c) Subsection (a) does not apply to contracts when the district or port authority is constructing a project for another political subdivision of the state.

(d) If a purchase or contract made under Subsection (a) is subject to a small business development program adopted by the port commission of the port authority or district, the purchase solicitation must indicate that fact and must also indicate where a copy of the program requirements may be obtained.

Added by Acts 2001, 77th Leg., ch. 738, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 307, Sec. 2, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 588, Sec. 12, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1330 (S.B. 1531), Sec. 7, eff. June 15, 2007.

Sec. 60.413. CRIMINAL PENALTY. (a) Except as provided by Subsection (b) of this section, a district or port authority officer or employee commits an offense if the person knowingly or intentionally violates a provision of this subchapter. An offense under this subsection is a Class C misdemeanor.

(b) A district or port authority officer or employee commits an offense if the person makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding or proposal procedure requirements of Section 60.404 or 60.405 of this code. An offense under this subsection is a Class B misdemeanor.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.

Sec. 60.414. APPLICATION OF OTHER LAW. If a district or port

authority is subject to the requirements of Subchapter B, Chapter 271, Local Government Code, those requirements are in addition to the requirements of this subchapter.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 26.010, eff. September 1, 2011.

SUBCHAPTER O. PURCHASE CONTRACTS

Sec. 60.451. DEFINITIONS. In this subchapter:

(1) "Architect" has the meaning assigned by Section 1051.001, Occupations Code.

(2) "Contractor" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of the facility at the contracted price.

(3) "Construction manager-agent" means a sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the district regarding construction, rehabilitation, alteration, or repair of a facility.

(4) "Construction manager-at-risk" means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the district regarding construction during and after the design of the facility.

(5) "Design-build contract" means a single contract with a design-build firm for the design and construction of a facility.

(6) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer or architect and builder qualified to engage in building construction in Texas.

(7) "Design criteria package" means a set of documents prepared by a district that provides sufficient information to permit a design-build firm to prepare a response to a district's request for qualifications and any additional information requested, including criteria for selection. The design criteria package must specify

criteria the district considers necessary to describe the project and may include, as appropriate:

(A) the legal description of the site;

(B) survey information concerning the site;

(C) interior space requirements;

(D) special material requirements;

(E) material quality standards;

(F) conceptual criteria for the project;

(G) special equipment requirements;

(H) cost or budget estimates;

(I) time schedules;

(J) quality assurance and quality control requirements;

(K) site development requirements;

(L) applicable codes and ordinances;

(M) provisions for utilities;

(N) geotechnical baseline reports;

(O) parking requirements; or

(P) any other requirements, as applicable.

(8) "District" means a navigation district or port authority created or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(9) "Engineer" has the meaning assigned by Section 1001.002, Occupations Code.

(10) "Facility" means real property, including buildings, associated structures, utilities, docks, wharves, channels, dredge material placement areas, marine terminal improvements, railroads on or adjacent to the marine terminal, roads and bridges on or adjacent to the marine terminal, and improved or unimproved land. The term also includes roads or bridges that are incidental to a larger project.

(11) "Fee" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means the payment a construction manager-agent or construction manager-at-risk receives for the manager's overhead and profit in performing the manager's services.

(12) "General conditions" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

Added by Acts 2003, 78th Leg., ch. 307, Sec. 1, eff. June 18, 2003.

Sec. 60.452. APPLICABILITY OF SUBCHAPTER; OTHER LAW. (a) This subchapter does not apply to a contract solely for professional services rendered, including services of an architect, attorney, or fiscal agent.

(b) If a district elects to make a procurement under this subchapter, this subchapter prevails over any other law relating to a purchase contract for goods and services by the district that is in conflict with or inconsistent with this subchapter.

(c) Chapter 2269, Government Code, does not apply to this subchapter.

Added by Acts 2003, 78th Leg., ch. 307, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 17, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 3.09, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(38), eff. September 1, 2013.

Sec. 60.453. AUTHORITY TO ADOPT RULES. The commission of a district may adopt rules and procedures for the acquisition of goods or services.

Added by Acts 2003, 78th Leg., ch. 307, Sec. 1, eff. June 18, 2003.

Sec. 60.454. PURCHASING CONTRACT METHODS. Notwithstanding any other provision of this chapter or other law, a district contract valued at more than the amount authorized in Section 60.403(a) for routine purchases or contracts in the aggregate for each 12-month period may be made by the method below that, in the opinion of the district's commission, provides the best value for the district:

(1) a design-build contract to construct, rehabilitate, alter, or repair facilities;

(2) a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager-agent or

construction manager-at-risk;

(3) competitive sealed proposals for construction, repair, rehabilitation, or alteration of a facility, and nonconstruction items;

(4) a job order contract for the construction, repair, rehabilitation, or alteration of a facility;

(5) a request for proposals, if the contract is for items other than construction services;

(6) competitive sealed bids;

(7) an interlocal contract as provided by Chapter 791, Government Code;

(8) the reverse auction procedure as defined by Section 2155.062(d), Government Code;

(9) a contract with the United States, including any agency thereof; or

(10) a contract with this state, including an agency of this state.

Added by Acts 2003, 78th Leg., ch. 307, Sec. 1, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 426 (S.B. 1786), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1081 (H.B. 2918), Sec. 15, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1330 (S.B. 1531), Sec. 8, eff. June 15, 2007.

Sec. 60.455. RIGHT TO REJECT ALL BIDS. A district that requests bids or proposals under any of the methods provided by this subchapter may reject any and all bids or proposals submitted.

Added by Acts 2003, 78th Leg., ch. 307, Sec. 1, eff. June 18, 2003.

Sec. 60.456. NOTICE REQUIREMENTS. For a contract entered into by a district under any of the methods provided by this subchapter, the district shall publish notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in each county in which the district is located

once each week for two consecutive weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in any county in which the district is located, the notice shall be published in a newspaper of general circulation in the county nearest the county seat of the county in which the district is located or the county in which the greatest amount of the district's territory is located. In a two-step procurement process, the time and place the second-step bids, proposals, or responses will be received are not required to be published separately.

Added by Acts 2003, 78th Leg., ch. 307, Sec. 1, eff. June 18, 2003.

Sec. 60.457. DELEGATION. (a) The commission of a district may, as it considers appropriate, delegate its authority under this subchapter regarding an action authorized or required by this subchapter to be taken by a district to a designated person, representative, or committee. In procuring construction services, the district shall provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications, or in an addendum to the request. If the district fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the commission in an open meeting is advisory only.

(b) A commission may not delegate the authority to act regarding an action authorized or required by this subchapter to be taken by the commission of a district.

Added by Acts 2003, 78th Leg., ch. 307, Sec. 1, eff. June 18, 2003.

Sec. 60.458. PURCHASE CONTRACT AWARD CRITERIA. Except as provided by this subchapter, in determining to whom to award a contract, the district may consider:

(1) the purchase price;

(2) the reputation of the vendor and of the vendor's goods or services;

(3) the quality of the vendor's goods or services;

(4) the extent to which the goods or services meet the district's needs;

(5) the vendor's past relationship with the district;

(6) the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses and on the district's small business development program, local preference program, or other contracting program adopted by the district, if any;

(7) the total long-term cost to the district to acquire the vendor's goods or services; and

(8) any other relevant factor specifically listed in the request for bids or proposals.

Added by Acts 2003, 78th Leg., ch. 307, Sec. 1, eff. June 18, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 13, eff. June 1, 2017.

Sec. 60.459. EVALUATION OF BIDS AND PROPOSALS FOR CONSTRUCTION SERVICES. (a) The commission of a district that is considering a construction contract using a method specified by Section 60.454 must, before advertising, determine which method provides the best value for the district.

(b) The district shall base its selection among offerors on criteria authorized to be used under Section 60.458. The district shall publish in the request for bids, proposals, or qualifications the specific criteria that will be used to evaluate the offerors and the relative weights given to the criteria.

(c) The district shall document the basis of its selection and shall make the evaluations public not later than the later of:

(1) the 30th day after the date of the award of the contract; or

(2) the next scheduled commission meeting.

Added by Acts 2003, 78th Leg., ch. 307, Sec. 1, eff. June 18, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 426 (S.B. 1786), Sec. 3, eff. September 1, 2005.

Sec. 60.460. DESIGN-BUILD CONTRACTS FOR FACILITIES. (a) A district may award a design-build contract for the construction,

rehabilitation, alteration, or repair of a facility provided that the contracting district and the design-build firm follow the procedures provided by this section.

(b) The district shall designate an engineer or architect independent of the design-build firm to act as its representative for the duration of the work on the facility. If the district's engineer or architect is not a full-time employee of the district, the district shall select the engineer or architect as provided by Section 2254.004, Government Code.

(c) The district shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The district shall also prepare a design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, those services shall be provided in accordance with the applicable law. An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of Chapter 1001, Occupations Code. An architect shall have responsibility for compliance with the requirements of Chapter 1051, Occupations Code.

(d) The district shall evaluate statements of qualifications and select a design-build firm in two phases:

(1) In phase one, the district shall prepare a request for qualifications and evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each offeror must certify to the district that each engineer or architect who is a member of its team was selected based on demonstrated competence and qualifications, in the manner provided by Section 2254.004, Government Code. The district shall qualify a maximum of five offerors to submit additional information and, if the district chooses, to interview for final selection.

(2) In phase two, the district shall evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. The district may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, construction cost, engineering and architectural design, or other factors as appropriate. The district shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications. The district shall select the design-build firm that submits the proposal offering the best value for the district on the basis of the published selection criteria and on its ranking evaluations. The district shall first attempt to negotiate a contract with the selected offeror. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(e) Following selection of a design-build firm under Subsection (d), that firm's engineers or architects shall complete the design, submitting all design elements for review and determination of scope compliance to the district or the district's engineer or architect before or concurrently with construction.

(f) The district shall provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials, and the verification testing services necessary for acceptance of the facility by the district. The district shall select those services for which it contracts in accordance with Section 2254.004, Government Code.

(g) The design-build firm shall supply a signed and sealed set of as-built construction documents for the project to the district at the conclusion of construction.

(h) A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract under this subchapter that includes design services only. If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the

performance and payment bonds delivered to the district must each be in an amount equal to the project budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the district to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

(i) The district shall pay an unsuccessful design-build firm that submits a response to the district's request for additional information on engineering or architectural design under Subsection (d)(2) the stipulated amount of up to one-half of one percent of the final contract price for any reasonable costs incurred in preparing that proposal. After payment of the stipulated amount, the district may make use of any design contained in the proposal, including the technologies, techniques, methods, processes, and information contained in the design. The use by the district of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the district and does not confer liability on the recipient of the stipulated amount under this section. The methodology for computing the stipulated amount must be stated in the request for additional information under Subsection (d)(2).

(j) The district may use a design-build firm to assist the district in obtaining a permit necessary for a facility, but the district is responsible for obtaining the permit.

(k) A successful design-build firm shall not be eligible for another design-build contract with the district for a period of 12 months after the date the successful design-build firm's contract has been completed if:

(1) the successful design-build firm's contract value exceeds $5 million; or

(2) the design-build firm is awarded design-build contracts by a district that total more than $5 million in a 12-month period.

Added by Acts 2003, 78th Leg., ch. 307, Sec. 1, eff. June 18, 2003.

Sec. 60.461. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT. (a) A district may award a contract to a construction manager-agent for the construction, rehabilitation, alteration, or

repair of a facility provided that the construction manager-agent and the district follow the procedures prescribed by this section.

(b) A district may, under the contract between the district and the construction manager-agent, require the construction manager-agent to provide administrative personnel, equipment necessary to perform duties under this section, and on-site management and other services specified in the contract. A construction manager-agent represents the district in a fiduciary capacity.

(c) Before or concurrently with selecting a construction manager-agent, the district shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable. If the engineer or architect is not a full-time employee of the district, the district shall select the engineer or architect as provided by Section 2254.004, Government Code. The district's engineer or architect may not serve, alone or in combination with another person, as the construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with this subchapter. This subsection does not prohibit the district's engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable laws.

(d) A district shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner as provided for the selection of engineers or architects under Section 2254.004, Government Code.

(e) A district contracting with a construction manager-agent shall procure, in accordance with applicable law, and in any manner authorized by this chapter, a general contractor, trade contractors, or subcontractors who will serve as the prime contractor for their specific portion of the work.

(f) The district or the construction manager-agent shall procure in accordance with Section 2254.004, Government Code, and in any manner authorized by this chapter, all of the testing of construction materials, the inspection services, and the verification testing services necessary for acceptance of the facility by the district.

Added by Acts 2003, 78th Leg., ch. 307, Sec. 1, eff. June 18, 2003.

Sec. 60.462. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK. (a) A district may award a contract to a construction manager-at-risk for the construction, rehabilitation, alteration, or repair of a facility provided that the construction manager-at-risk and the district follow the procedures prescribed by this section.

(b) Before or concurrently with selecting a construction manager-at-risk, the district shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable. If the engineer or architect is not a full-time employee of the district, the district shall select the engineer or architect in accordance with Section 2254.004, Government Code. The district's engineer, architect, or construction manager-agent for a project may not serve, alone or in combination with another, as the construction manager-at-risk.

(c) The district shall provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials, and the verification testing services necessary for acceptance of the facility by the district. The district shall select those services for which it contracts in accordance with Section 2254.004, Government Code.

(d) The district shall select the construction manager-at-risk in either a one-step or two-step process. The district shall prepare a request for proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes general information on the project site, project scope, schedule, selection criteria, and estimated budget, the time and place for receipt of proposals or qualifications, as applicable, a statement as to whether the selection process is a one-step or two-step process, and other information that may assist the district in its selection of a construction manager-at-risk. The district shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one-step process is used, the district may request, as part of the

offeror's proposal, proposed fees and prices for fulfilling the general conditions.

(e) If a two-step process is used, the district may not request fees or prices in step one. In step two, the district may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.

(f) At each step, the district shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the district shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. Not later than the 45th day after the date of opening the proposals, the district shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

(g) The district shall select the offeror that submits the proposal that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(h) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the district must each be in an amount equal to the project budget, as specified in the request for proposals or qualifications. The construction manager-at-risk shall deliver the bonds not later than the 10th day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the district to ensure that the construction manager-at-risk will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Added by Acts 2003, 78th Leg., ch. 307, Sec. 1, eff. June 18, 2003.

Sec. 60.463. SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. (a) In selecting a contractor for construction, rehabilitation, alteration, or repair services for a facility through competitive sealed proposals, a district shall follow the procedures prescribed by this section.

(b) The district shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable. If the engineer or architect is not a full-time employee of the district, the district shall select the engineer or architect as provided by Section 2254.004, Government Code.

(c) The district shall provide or contract for, independently of the contractor, the inspection services, the testing of construction materials, and the verification testing services necessary for acceptance of the facility by the district. The district shall select those services for which it contracts in accordance with Section 2254.004, Government Code, and shall identify them in the request for proposals.

(d) The district shall select a contractor through competitive sealed proposals in either a one-step or two-step process. The district shall prepare a request for competitive sealed proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes construction documents, selection criteria, project scope, schedule, the time and place for receipt of proposals or qualifications, as applicable, a statement as to whether the selection process is a one-step or two-step process, and other information that contractors may require to respond to the request. The district shall state in the request for proposals or qualifications, as applicable, the selection criteria that will be used in selecting the successful offeror. If a one-step process is used, the district may request, as part of the offeror's proposal, proposed prices.

(d-1) If a two-step process is used, the district may not request prices in the first step. In the second step, the district may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including proposed prices.

(e) At each step, the district shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step,

the district shall read aloud the prices, if any, stated in each proposal as the proposal is opened. Not later than the 45th day after the date of opening the proposals, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.

(e-1) Notwithstanding Subsection (e), if the district demonstrates 45 days is not sufficient time for thorough evaluation, the district may specify in the request for competitive sealed proposals a deadline, not later than the 90th day after the date of opening the proposals, to evaluate and rank each proposal submitted in relation to the published selection criteria.

(f) The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district and its engineer or architect may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(g) In determining best value for the district, the district is not restricted to considering price alone, but may consider any other factor stated in the selection criteria.

Added by Acts 2003, 78th Leg., ch. 307, Sec. 1, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 513 (H.B. 769), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1330 (S.B. 1531), Sec. 9, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1191 (H.B. 3785), Sec. 9, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 14, eff. June 1, 2017.

Sec. 60.464. JOB ORDER CONTRACTS FOR FACILITIES CONSTRUCTION OR REPAIR. (a) A district may award job order contracts for the

construction, repair, rehabilitation, or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of predescribed and prepriced tasks.

(b) The district may establish contractual unit prices for a job order contract by:

(1) specifying one or more published construction unit price books and the applicable divisions or line items; or

(2) providing a list of work items and requiring the offerors to bid or propose one or more coefficients or multipliers to be applied to the price book or work items as the price proposal.

(c) The district shall advertise for, receive, and publicly open sealed proposals for job order contracts.

(d) The district may require offerors to submit, in addition to information on rates, other information, including experience, past performance, and proposed personnel and methodology.

(e) The district may award job order contracts to one or more job order contractors in connection with each solicitation of bids or proposals.

(f) An order for a job or project under the job order contract must be signed by the district's representative and the contractor. The order may be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities or may be a unit price order based on the quantities and line items delivered.

(g) The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

(h) The base term of a job order contract is for the period and with any renewal options that the district sets forth in the request for proposals. If the district fails to advertise that term, the base term may not exceed two years and is not renewable without further advertisement and solicitation of proposals.

(i) If a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, the district shall select or designate an architect or engineer to prepare the construction documents for the facility. If the architect or engineer is not a full-time employee of the district, the district shall select the

architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

Added by Acts 2003, 78th Leg., ch. 307, Sec. 1, eff. June 18, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 18, eff. September 1, 2007.

SUBCHAPTER Q. MISCELLANEOUS PROVISIONS

Sec. 60.501. SAFETY AND SECURITY PROCEDURES; NO NEW DUTIES. The adoption and use by a district of a safety or security code, policy, or manual does not create any new or additional legal duties of the district not existing under common law or statutory law.

Added by Acts 2005, 79th Leg., Ch. 426 (S.B. 1786), Sec. 4, eff. September 1, 2005.

SUBCHAPTER R. CHARITABLE CONTRIBUTIONS

Sec. 60.551. DEFINITIONS. In this subchapter:

(1) "Charitable organization" means an organization that:

(A) is organized for charitable purposes under Chapter 22, Business Organizations Code, or holds a certificate of authority issued under that chapter;

(B) is exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 as an organization described in Section 501(c)(3) of that code and to which contributions are deductible for income tax purposes under Section 170 of that code;

(C) complies with all applicable federal nondiscrimination law, including Chapter 21, Title 42, United States Code;

(D) complies with all state statutes and rules relating to charitable organizations;

(E) is not a private foundation; and

(F) provides funds or programs for eligible services that directly or indirectly benefit the recipients.

(2) "District employee charitable campaign" means a campaign conducted in communities or areas in which district employees solicit contributions to an eligible charitable organization.

(3) "Eligible charitable organization" means a charitable organization eligible to participate in the district employee charitable campaign as provided by Section 60.561.

(4) "Eligible services" means services provided by a charitable organization that:

(A) benefit residents of this state, including children, youth, adults, elderly individuals, ill or infirm individuals, or individuals with a mental or physical disability, and consist of:

(i) human care, medical or other research in the field of human health, education, social adjustment, or rehabilitation;

(ii) relief for victims of natural disaster or other emergencies; or

(iii) assistance to impoverished individuals in need of food, shelter, clothing, or other basic needs; or

(B) benefit this state, and consist of activities to:

(i) safeguard public health and the environment; or

(ii) help solve environmental problems.

(5) "Federation or fund" means a fund-raising entity that:

(A) is a charitable organization;

(B) acts as an agent for at least five charitable organizations;

(C) is not organized exclusively to solicit contributions from district employees; and

(D) is supported by voluntary contributions by the public and is:

(i) incorporated in this state and has an established physical presence in this state in the form of an office or service facility that is staffed at least 20 hours a week; or

(ii) incorporated outside this state, includes at least 10 affiliated charitable organizations, and has existed at least three years.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 17, eff. June 17, 2011.

Sec. 60.552. AUTHORIZATION OF CAMPAIGN. (a) The commission or the executive director of a district may establish a program in the

district to allow district employees to participate in a charitable campaign as provided by this subchapter.

(b) The commission or executive director of a district may adopt rules relating to the operation of a district employee charitable campaign as described in this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 17, eff. June 17, 2011.

Sec. 60.553. DEDUCTION AUTHORIZED. (a) A district employee may authorize a deduction each pay period from the employee's salary or wage payment for a charitable contribution as provided by this subchapter.

(b) An authorization must direct the district to distribute the deducted funds to a participating federation or fund.

(c) A deduction under this subchapter must be in the form prescribed by the district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 17, eff. June 17, 2011.

Sec. 60.554. VOLUNTARY PARTICIPATION. (a) Participation by a district employee in a state employee charitable campaign is voluntary. The district shall inform district employees that deductions are voluntary.

(b) The district shall adopt rules establishing a process for hearing employee complaints regarding coercive activity in a district employee charitable campaign.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 17, eff. June 17, 2011.

Sec. 60.555. DESIGNATION OF AN ELIGIBLE CHARITABLE ORGANIZATION. (a) A district employee may designate in the authorization an eligible charitable organization to receive the deductions.

(b) If a district employee does not designate an eligible charitable organization, the employee's deductions shall be

distributed to each participating federation or fund and eligible local charitable organization in the proportion that the deductions designated for that charitable organization bear to the total of designated deductions in the district employee charitable campaign.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 17, eff. June 17, 2011.

Sec. 60.556. CONFIDENTIALITY. (a) Except as necessary to administer this subchapter or on written authorization of the employee, the following information is confidential:

(1) whether a district employee has authorized a deduction under this subchapter;

(2) the amount of the deduction; and

(3) the name of a federation or fund or charitable organization that a district employee has designated to receive contributions.

(b) The designation of a charitable organization by a district employee is not confidential if the employee executes a written pledge card or other document indicating that the employee wishes to receive an acknowledgement from the charitable organization.

(c) The district shall provide notice to district employees of the confidentiality provisions described by this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 17, eff. June 17, 2011.

Sec. 60.557. REVOCATION OR CHANGE OF AUTHORIZATION. (a) A district employee may revoke or change an authorization by giving notice to the district.

(b) The notice must be in the form and manner prescribed by the district.

(c) A revocation or change takes effect on the date designated by the district, but not later than the 45th day after the date the district employee gives notice.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 17, eff. June 17, 2011.

Sec. 60.558. DURATION OF DEDUCTION. (a) A deduction under this subchapter begins on the date designated by the district employee.

(b) A deduction under this subchapter, unless revoked or changed under Section 60.557, ends on the date designated by the district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 17, eff. June 17, 2011.

Sec. 60.559. FAIR AND EQUITABLE MANAGEMENT OF CAMPAIGN. A district employee charitable campaign must be managed fairly and equitably in accordance with this subchapter and the rules, policies, and procedures established by the district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 17, eff. June 17, 2011.

Sec. 60.560. CAMPAIGN POLICY AND MANAGEMENT. (a) The executive director of the district shall oversee the district employee charitable campaign and the district's employees who conduct the campaign.

(b) The executive director of the district and employees designated by the executive director of the district shall:

(1) determine the eligibility of a federation or fund and its affiliated agencies for participation in the district employee charitable campaign;

(2) develop a campaign plan, budget, and materials to be used in the campaign;

(3) coordinate and facilitate the campaign;

(4) ensure that all district employee charitable campaign activities are conducted fairly and equitably to promote unified solicitation on behalf of all participants; and

(5) perform other duties required by rules relating to the district employee charitable campaign.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 17, eff. June 17, 2011.

Sec. 60.561. ELIGIBILITY OF CHARITABLE ORGANIZATIONS, FEDERATIONS, AND FUNDS FOR PARTICIPATION. (a) To be eligible to participate in a district employee charitable campaign, a charitable organization must:

(1) be governed by a voluntary board of citizens that meets at least twice each year to set policy and manage the affairs of the organization;

(2) if the organization's annual budget:

(A) does not exceed $100,000, provide a completed Internal Revenue Service Form 990 and an accountant's review that offers full and open disclosure of the organization's internal operations; or

(B) exceeds $100,000, be audited annually in accordance with generally accepted auditing standards of the American Institute of Certified Public Accountants; and

(3) not spend more than 25 percent of its annual revenue for administrative and fund-raising expenses.

(b) A federation or fund that seeks participation in a district employee charitable campaign must apply on behalf of itself and its affiliated agencies to the district during the eligibility determination period specified by the district. The district shall review each application and may approve a federation or fund for statewide participation only if the federation or fund qualifies as a charitable organization. The district may approve an affiliated charitable organization for participation only if the organization qualifies as a charitable organization.

(c) The district may use outside expertise and resources available to it, and rely on a certification of a charitable organization, or determination of qualification by a statewide employee charitable campaign under Section 659.146, Government Code, to assess the eligibility of a charitable organization that seeks to participate in a district employee charitable campaign.

(d) An appeal from a decision of the district shall be conducted in the manner prescribed by the commission. The appeals process must permit a charitable organization that is not approved for participation to apply for participation in a district employee charitable campaign.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 17, eff. June 17, 2011.

Sec. 60.562. FUND-RAISING PRACTICES. The fund-raising practices of a participating charitable organization must:

(1) be truthful and consumer-oriented; and

(2) protect against:

(A) unauthorized use of a list of contributors to the organization;

(B) payment of commissions, kickbacks, finder fees, percentages, bonuses, or overrides for fund-raising;

(C) mailing of unordered merchandise or tickets with a request for money in return; and

(D) general phone solicitation of the public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 17, eff. June 17, 2011.

Sec. 60.563. LIMITATION ON USE OF CONTRIBUTIONS. (a) A participating charitable organization may use contributions under this subchapter only to provide eligible services or to fund a charitable organization that provides eligible services.

(b) A participating charitable organization may not use contributions under this subchapter to:

(1) directly or indirectly fund litigation; or

(2) make expenditures that would require the organization to register under Chapter 305, Government Code, if the organization were not an entity exempt from registration under that chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 17, eff. June 17, 2011.

Sec. 60.564. MISAPPLICATION OF CONTRIBUTIONS; AUDIT. (a) The district may obtain an audit of any participating charitable organization that the district reasonably believes has misapplied contributions under this subchapter.

(b) If an audit under this section reveals gross negligence or intentional misconduct on the part of a participating charitable organization, the district shall remove the charitable organization from the campaign. A charitable organization removed under this

subsection is not eligible to participate in a district employee charitable campaign before the fifth anniversary of the date the charitable organization was removed.

(c) If an audit under this section reveals intentional misconduct on the part of a charitable organization, the district shall forward its findings to the appropriate law enforcement agency.

(d) The district may bring an action to recover misapplied contributions.

(e) If an investigation or lawsuit results in a recovery of misapplied contributions and there is not a judgment distributing the amounts recovered, the district shall determine the manner of refunding contributions to the appropriate district employees.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 17, eff. June 17, 2011.

CHAPTER 61. ARTICLE III, SECTION 52, NAVIGATION DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 61.001. DEFINITIONS. In this chapter:

(1) "District" means a navigation district created under Article III, Section 52, of the Texas Constitution.

(2) "Commission" means the navigation and canal commission of a district.

(3) "Board" means the navigation board.

(4) "Commissioners court" means the commissioners court of the county in which the district is located or the commissioners court of the county of jurisdiction.

(5) "Commissioner" means a member of the navigation and canal commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 61.021. CREATION. A navigation district may be created as provided in this chapter to operate under Article III, Section 52 of the Texas Constitution.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.022. AREA INCLUDED IN DISTRICT. A district may include all or part of a village, town, or municipal corporation, but may not include more than all or parts of two counties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.023. DISTRICT MAY INCLUDE ROAD DISTRICT. On petition signed by a majority of the property taxpayers who reside in the special road district, a district which includes all or parts of two counties may include any special road district which has voted bonds to construct public roads. If the entire county which includes the road district is included in the district, this section does not apply.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.024. PETITION TO CREATE SINGLE-COUNTY DISTRICT. (a) To create a district located wholly in one county, a petition, signed by 25 of the resident property taxpayers, or if there are fewer than 75 resident property taxpayers in the proposed district, then by one-third of them, shall be presented to the commissioners court of the county.

(b) The petition shall include:

(1) a request for the establishment of a navigation district;

(2) a description of the boundaries of the proposed district, accompanied by a map;

(3) a statement of the general nature of the improvements proposed;

(4) an estimate of the probable cost;

(5) a request for the issuance of bonds and the levy of a tax to pay for the bonds; and

(6) the designation of a name for the district which shall include the name of the county.

(c) An affidavit stating the qualifications of the petitioners shall accompany the petition.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.025. PETITION TO CREATE DISTRICT IN TWO COUNTIES. (a) If the proposed district is located in two counties, the petition shall be presented to the commissioners court of the county which includes the greater part of the district, and this county shall be the county of jurisdiction with relation to all matters concerning the district.

(b) The petition shall be signed by 25 resident property taxpayers in each county in the district or if there are fewer than 75 resident property taxpayers in either of the counties, then by one-third of the resident property taxpayers in that county.

(c) The name of the district shall include the name of the county which has jurisdiction.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.026. DEPOSIT. (a) The petition shall be accompanied by $500 in cash, which shall be deposited with the clerk of the commissioners court.

(b) The money shall be held by the clerk until after the result of the election for the creation of the district has been declared and entered of record by the commissioners court.

(c) If the result of the election is in favor of the establishment of the district, the deposit shall be returned to the petitioners or their agent or attorney.

(d) If the result of the election is against the establishment of the district, the clerk shall pay out of the $500, with vouchers signed by the county judge, all costs and expenses connected with the proposed district, including the election. Any balance shall be returned to the petitioners or their agents or attorney.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.027. HEARING. (a) On presentation of the petition, the commissioners court shall order a hearing to be held at a regular or special term of the commissioners court.

(b) The hearing shall be held not less than 30 days nor more than 60 days from the date the petition is presented.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.028. NOTICE OF HEARING. (a) The commissioners court shall order the clerk to give notice of the date and place of the hearing by posting a copy of the petition and the order of the commissioners court at the courthouse door and at four other public places within the boundaries of the proposed district.

(b) The notices shall be posted not less than 20 days immediately preceding the time set for the hearing.

(c) If the district is composed of more than one county, the notices shall be posted in each county.

(d) The clerk is entitled to receive $1 for each notice he posts and five cents a mile for each mile traveled to post the notices.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.029. HEARING BY BOARD. (a) If the proposed district includes all or part of a city acting under special charter granted by the legislature, the hearing shall be held at the regular meeting place of the commissioners court before a board.

(b) The board shall include the county judge and the members of the commissioners court and the mayor and the aldermen or commissioners of the city or cities.

(c) The board shall pass on the petition with each individual member having one vote.

(d) A majority in number of the persons composing the board shall constitute a quorum, and the action of the quorum shall control.

(e) The hearing shall be held and notice shall be given as provided in Sections 61.027-61.028 of this code.

(f) The clerk shall record the proceedings of the board in the book kept for that purpose, and this record shall be available for public inspection.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.030. CONDUCT OF HEARING. (a) The commissioners court or the board has exclusive jurisdiction to hear and determine all

contests and objections to the creation of the proposed district, all matters relating to the creation of the proposed district, and all subsequent proceedings of the proposed district after it is organized.

(b) The commissioners court or the board may adjourn the hearing from day to day, and all judgments or decisions rendered by it shall be final unless otherwise provided in this chapter.

(c) Any person who might be affected by creation of the district may appear at the hearing and support or oppose creation of the proposed district and may offer testimony relating to:

(1) the necessity and feasibility of the proposed district;

(2) the benefits to accrue from formation of the proposed district;

(3) the boundaries of the proposed district; or

(4) any other matter concerning the proposed district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.031. FINDINGS. (a) If it appears at the hearing that the proposed improvements are feasible and practicable and would be a public benefit and utility, the commissioners court or the board shall make these findings and approve the boundaries stated in the petition or make changes in the boundaries.

(b) Changes may not be made in the proposed boundaries until notice is given and a hearing held in the manner provided in Sections 61.027-61.030 of this code.

(c) If the commissioners court or board is unable to make the findings under Subsection (a) of this section, it shall dismiss the petition at the cost of the petitioners. Dismissal of the petition shall not prevent presentation of other petitions at a later date.

(d) The commissioners court or the board shall enter all findings in its records.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.032. PROVIDING FUNDS FOR PROPOSED IMPROVEMENTS. (a) If the commissioners court or the board approves the boundaries in the petition or as changed and decides to grant the petition, it shall determine the amount of money necessary for the improvements

and all expenses connected with the improvements and whether to issue bonds for the full amount or, in the first instance, for a less amount.

(b) The commissioners court or the board shall specify the amount, term, and rate of interest of bonds to be issued.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.033. ELECTION ORDER. (a) If the commissioners court or the board finds in favor of the establishment of the district and the issuance of bonds and levy of a tax, the commissioners court shall order an election to vote on the proposition.

(b) The election order shall specify the amount of the bonds to be issued, their maturity dates, and the rate of interest.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.034. ELECTIONS. (a) When an election is held under this chapter, notice shall be posted for 30 days before the election in the manner provided for posting notice. The notice shall include:

(1) the time and place of the election;

(2) the proposition;

(3) the purpose of the election; and

(4) a copy of the election order.

(b) Unless otherwise provided, a two-thirds vote is necessary to carry a proposition submitted at an election.

(c) The commissioners court shall create and define, by order, the voting precincts in the district and shall name convenient polling places in the precincts. It shall appoint necessary election officials and shall hold elections at the earliest legal time.

(d) After canvassing the returns of an election, if the commissioners court finds that the proposition has carried, it shall declare the result and enter it in the minutes as provided in this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.035. BALLOTS. The ballots for the election shall be

printed to provide for voting for or against the proposition: "The creation of a navigation district and the issuance of bonds and the levy of a tax to pay for the bonds."

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.036. DECLARATION OF RESULT. If the proposition carries at the election, the commissioners court shall enter the following declaration in its minutes:

"Commissioners Court of _____ County, Texas, _____ term A.D. _____: In the matter of the petition of _____ and _____ others requesting the establishment of a navigation district and the issuance of bonds and the levy of taxes in the petition described and designated by the name of _____ Navigation District. Be it known that at an election called for that purpose in the district, held on the _____ day of _____ A.D. _____, a two-thirds majority of the electors voting on the proposition voted in favor of the creation of the navigation district, and the issuance of bonds and the levy of a tax. Now, therefore, it is considered and ordered by the court that the navigation district be and the same is hereby established by the name of _____ Navigation District, and that the bonds of the district in the amount of $_____ be issued, and a tax of _____ cents on the $100 valuation or so much thereof as may be necessary to be levied on all property inside the navigation district sufficient in amount to pay the interest on the bonds and provide a sinking fund to redeem them at maturity, and that if the tax becomes insufficient for these purposes, it shall be increased until it is sufficient. The metes and bounds of the district shall be as follows: (Description of metes and bounds.)"

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 61.071. APPOINTMENT OF COMMISSIONERS. After a district is created, the commissioners court or the board, by majority vote, shall biennially appoint three commissioners to the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.072. ORGANIZATION: QUORUM. The commission shall organize by electing one of their number chairman and one secretary. Two of the commissioners shall constitute a quorum, and a concurrence of two shall be sufficient in all matters relating to the business of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.073. QUALIFICATIONS. To be qualified for appointment as a commissioner, a person must be a resident of the district, a freehold property taxpayer, and a qualified elector of the county.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.074. TERM OF OFFICE, REMOVAL, AND SUCCESSION. (a) Each commissioner shall hold office for four years and until his successor has qualified, unless sooner removed by a majority vote of the commissioners court or the board for malfeasance or nonfeasance in office.

(b) All vacancies in the office of commissioner shall be filled for the unexpired term in the manner provided for the original appointment to the office.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1983, 68th Leg., p. 5217, ch. 951, Sec. 13, eff. Jan. 1, 1984.

Sec. 61.075. COMMISSIONER'S OATH. Each commissioner shall subscribe an oath before the county judge of the county of jurisdiction to discharge faithfully the duties of his office without favor or partiality, and to render a true account of his activities to the commissioners court or the board which appointed him. The oath shall be filed by the clerk and preserved as a part of the records of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.076. COMMISSIONER'S BOND. Each commissioner shall execute a good bond for $1,000, payable to the county judge for the use and benefit of the district and conditioned on the faithful performance of his duties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.077. COMMISSIONERS' COMPENSATION. The commissioners are entitled to receive for their services compensation fixed by the commissioners court and entered in the record.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.078. DISTRICT TREASURER. The county treasurer of the county of jurisdiction shall be treasurer of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.079. DISTRICT TREASURER'S BOND. (a) Before receiving the proceeds of any district bonds and before receiving any district funds from any source, the district treasurer shall execute a good and sufficient bond payable to the commission for the benefit of the district. The bond shall be in an amount fixed and approved by the commission.

(b) The bond shall be conditioned on the district treasurer's faithfully executing the duties of his office, paying over all money that comes into his hands as the treasurer, and rendering a just account to the commissioners court or the commission when required to do so.

(c) The bond required by this section shall remain in full force and effect as long as any funds belonging to the district are in the possession or under the control of the treasurer.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.080. DISTRICT TREASURER'S COMPENSATION. The district treasurer shall be entitled to receive for his services an amount fixed by the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.081. DUTIES IMPOSED WITHOUT COMPENSATION. The duties and powers conferred on county, city and other officers under this chapter are a part of the legal duty of the officers which they shall perform without additional compensation, unless otherwise provided in this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.082. COURT ACTIONS. (a) The district, by and through its commission, may sue and be sued in any court in this state in the name of the district.

(b) The courts of this state shall take judicial notice of the establishment of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 61.111. PURPOSES OF DISTRICT. A district may:

(1) improve rivers, bays, creeks, streams, and canals inside or adjacent to the district;

(2) construct and maintain canals and waterways to permit or aid navigation; and

(3) issue bonds to pay for these improvements.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.112. EMPLOYEES AND COUNSEL. (a) The commission may employ assistant engineers and other employees which are necessary and may determine their compensation.

(b) The commission may retain counsel to represent the district in the preparation of contracts or in the conduct of any proceedings

in or out of court and to be the legal advisor of the commission on terms and for fees agreed on by the parties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.113. AUTHORITY TO GO ON LAND. The commissioners and engineers, together with all necessary teams, help, tools and instruments, may go on any land located inside the district for the purpose of examining the land and making plans, surveys, maps, and profiles, without subjecting themselves to the laws of trespass.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.114. PENALTY FOR PROHIBITING ENTRY TO LAND. Any person who wilfully prevents or prohibits any officer listed in Section 61.113 of this code from entering land for the purposes stated in that section on conviction shall be punished by a fine of not more than $25 a day for each day he prevents or prohibits the officer from entering the land.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.115. ACQUISITION OF PROPERTY. The commission may acquire by gift, grant, purchase, or condemnation any necessary rights-of-way and property for necessary improvements contemplated by the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.116. LEASE OF STATE OWNED LANDS AND FLATS. (a) Any district organized under this chapter or any special law or any general law under which navigation districts may be created may apply for a lease from the State of Texas of the surface estate of any lands and flats belonging to the state which are covered or partly covered by the water of any of the bays or other arms of the sea; however, any navigation district created after the effective date of this Act may not lease the surface estate of any such lands or flats

which are located within 10 miles of the boundary of any navigation district in existence on the effective date of this Act, without first receiving the written approval of the district now in existence. The words "navigation district," "district," or "districts" as used in Sections 61.116, 61.117, and 60.038 of the Texas Water Code shall apply to any incorporated city in this state which owns and operates wharves, docks, and other marine port facilities.

(b) The state, through the School Land Board, may lease these state owned lands or flats to eligible navigation districts only for purposes reasonably related to the promotion of navigation. The term "navigation" as used herein refers to marine commerce and immediately related activities, including but not limited to port development; channel construction and maintenance; commercial and sport fishing; recreational boating; industrial site locations; transportation, shipping, and storage facilities; pollution abatement facilities; and all other activities necessary or appropriate to the promotion of marine commerce; but specifically does not refer to residential development.

(c) In making application for a lease of state owned lands or flats, the district shall include the following information:

(1) a description of the lands or flats sought to be leased;

(2) a plan showing how it proposes to utilize the land and a timetable indicating approximately when such utilization will take place;

(3) a draft environmental impact statement assessing the effect of the proposed use on the environment, which statement shall generally conform to the requirements of the National Environmental Policy Act, until such time as the legislature shall impose different requirements; however, a draft environmental impact statement shall not be required if the proposed use requires no dredging, filling, or bulkheading. If the proposed use does require dredging, filling, or bulkheading, but the lease shall be processed as provided in Subsections (d), (e), and (f) of this section without the filing of a draft environmental impact statement if the applicant so requests in writing; but in such a case, the School Land Board shall include in the lease provisions requiring (i) that the draft environmental impact statement required by federal law be filed with the School Land Board before the district makes any use of such lands or flats

which requires dredging, filling, or bulkheading; (ii) that approval of such use be obtained from the School Land Board after copies of the summary of the draft environmental impact statement and a description of the proposed use are circulated for comment and a hearing held as provided in Subsections (d) and (e) of this section and the School Land Board shall be authorized to give its approval to make such amendments to the lease as may then be deemed necessary by it as a result of information developed in the draft environmental impact statement; and (iii) that the lease shall cease to be effective at a time specifically stated in the lease unless prior to that time accord concerning environmental issues has been reached between the district and the School Land Board;

(4) proof satisfactory to the board establishing the public convenience and necessity for acquisition of lands sought to be leased.

(d) Upon receipt of an application and accompanying information, the School Land Board shall submit copies thereof to the member agencies of the Interagency Council on Natural Resources and the Environment and all other appropriate state agencies for review and comment. In addition, the board shall submit for review and comment the proposed terms and conditions of the lease. The board shall allow 30 days for such review and comment, and may extend the review period for an additional 30 days upon written request by the executive director of any state agency.

(e) Following the expiration of the period provided for review and comment, or following the expiration of the 30 day extension of such period, if applicable, the School Land Board shall cause a hearing to be held in the county in which the land proposed to be leased is located. Notice of the hearing shall be given by publication for at least three days, not less than two weeks nor more than four weeks prior to the hearing, in the daily paper having the greatest circulation in the county. Members of the board or their designated representatives shall conduct the hearing, at which any party may offer testimony in support of or in opposition to the application, and the board shall consider the record of the hearing in making a decision on the application.

(f) After submission of all evidence, the School Land Board shall authorize the issuance or denial of the proposed lease and shall determine the reasonable cost to the district, term of years, special limitations, if any, and other conditions necessary to best

serve the interest of the general public. In establishing the consideration to be paid to the state for the lease, due weight shall be given to the depth of the water over the submerged land, its proximity to development activities, and its proposed use. Final action shall be taken by the board no more than 60 days following the public hearing.

(g) The funds derived from the lease shall be paid to the General Land Office for transfer to the proper funds of the state.

(h) Districts may sublease lands leased from the state under the provisions of this section to third parties for activities reasonably related to navigation, but such sublease shall be subject to the approval of the School Land Board according to the procedures, requirements, and criteria set forth in Subsections (c) and (d) of Section 61.116 of this code; provided, however, that no approval by the School Land Board shall be required if the sublease is for a purpose contemplated by the district and approved by the board in the district's original lease. It is further provided that no environmental impact statement shall ever be necessary for any sublease which requires no dredging, filling, or bulkheading, and which would not have a substantial impact upon the environment, or which requires only insubstantial dredging, filling, or bulkheading, as determined by the board; nor shall a district in obtaining approval for a sublease under any circumstances be required to reveal the name of the tenant to whom the sublease is to be made.

(i) If lands or flats leased from the state under the provisions of this section are utilized by the district or its sublessee for any purpose or use not approved by the School Land Board, the district shall be given notice and an opportunity to change and correct the use. If the use is not changed and corrected within a reasonable time after receipt of such notice, the lease may be terminated by the School Land Board and the lands or flats shall revert to the State of Texas.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1973, 63rd Leg., p. 553, ch. 237, Sec. 1, eff. June 11, 1973; Acts 1975, 64th Leg., p. 801, ch. 310, Sec. 2, eff. May 27, 1975.

Sec. 61.117. LIMITATIONS ON SALES AND USE OF STATE LANDS AND

FLATS. (a) The State of Texas shall retain its rights in all mines and minerals, including oil, gas, and geothermal resources, in and under the land, together with the right to enter the land for the purpose of development when it leases land under Section 61.116 of this code.

(b) All leases of land under Section 61.116 are subject to oil, gas, or mineral leases in existence at the time of the lease to the district.

(c) Any land which has been franchised or leased or is being used by any navigation district or by the United States for the purpose of navigation, industry, or other purpose incident to the operation of a port shall not be entered or possessed by the State of Texas or by anyone claiming under the State of Texas for the purpose of exploring for oil, gas, or other minerals except by directional drilling. No easement, lease, or permit may be granted on land which has been leased to a navigation district which will interfere with the proposed use of the land by the navigation district, and the prior approval of the navigation district shall be obtained for such purpose.

(d) No surface drilling location may be nearer than 660 feet and special permission from the Commissioner of the General Land Office is necessary to make any surface location nearer than 2,160 feet, measured at right angles from the nearest bulkhead line designated by a navigation district or the United States as the bulkhead line or from the nearest dredged bottom edge of any channel, slip, or turning basin which has been dredged, or which has been authorized by the United States as a federal project for future construction, whichever is nearer.

(e) In the event land is leased to a navigation district for construction of a navigation project, the School Land Board may in the lease designate the district to be the agent of the State of Texas with authority to grant to the United States of America such easements for dredging and disposal of dredged material as may be required for federal participation in the project. In designating the district to be the agent of the State of Texas for the purpose of granting spoil easements, the board may include a requirement that the district obtain the approval of the board before granting any such easement. Such approval may be given in the form of accepting a master plan for spoil disposal.

(f) Districts which, prior to the enactment of this provision,

have obtained patents to state owned lands or flats under Article 8225, Revised Civil Statutes of Texas, 1925, or under any general or special act, and which still claim title to any such lands or flats, may not hereafter dispose of any such lands or flats which were conveyed to them by the State of Texas and may not lease such lands or flats for a use for which districts are not authorized to lease their other lands; however, in the event a district possesses lands it finds to be in excess of its needs, it may sell such surplus lands or flats back to the State of Texas for the same consideration as originally paid to the state or exchange them for other lands with the State of Texas. It is further provided that the limitation on resale of lands or flats acquired from the State of Texas shall not prevent a district from exchanging such lands or flats for land, or rights in land, of an adjacent littoral owner for the purpose of adjusting or straightening the boundary between such lands. All such exchanges made after December 31, 1973, shall be subject to the approval of the School Land Board.

(g) Any district which, prior to the effective date of this Act has maintained, and which at the effective date of this Act is maintaining, any channel, dredged material disposal site, or other navigational aid or improvement on state owned lands to which the district holds no patent or lease from the state shall notify the General Land Office of the boundaries of such submerged land used by furnishing a map or other drawing acceptable to the General Land Office.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1973, 63rd Leg., p. 555, ch. 237, Sec. 2, eff. June 11, 1973; Acts 1975, 64th Leg., p. 803, ch. 310, Sec. 3, eff. May 27, 1975.

Sec. 61.118. CONSTRUCTION CONTRACTS. (a) Except as provided in this section, the provisions of Chapter 3, Title 128, Revised Civil Statutes of Texas, 1925, governing water control and preservation districts which relate to advertising for, awarding, and performing contracts for the construction of improvements and work authorized by law shall apply to construction contracts made under this subchapter.

(b) The bidder's deposit for a construction contract shall be

five percent of the amount bid, and the contractor's bond shall be for not less than 25 percent of the contract price.

(c) The contract shall be signed by at least two of the commissioners, and the partial payments made under the contract shall not be more than 90 percent of the contract price.

(d) In case of public calamity or extreme emergency which makes it necessary to act at once to preserve the property of the district and its residents or in case of unforeseen damage to the property or equipment of the district, the provisions of this section requiring advertisement for bids under Article 7853, Revised Civil Statutes of Texas, 1925, may be waived. In any of these situations, the commission shall record in the minutes of the district that an emergency exists and the facts which gave rise to the emergency.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.119. INTEREST IN CONTRACT OF NAVIGATION DISTRICT. If the county judge, a county commissioner, a member of the board or the commission, or the engineer shall directly or indirectly become interested in a contract for work to be done by the district or in any fee paid by the district, which would allow him to receive any money consideration or other thing of value except in payment of services as provided by law, on conviction he shall be confined in jail for not less than six months nor more than one year.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.120. LAWS GOVERNING CERTAIN FUNCTIONS OF DISTRICT. Chapter 3, Title 128, Revised Civil Statutes of Texas, 1925, relating to eminent domain, employment and duties of the district engineer, cooperation with the federal government, and the director's annual report shall apply to this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER E. PORT FACILITIES

Sec. 61.151. AUTHORITY TO OPERATE AND DEVELOP PORT FACILITIES. (a) A district created for the development of deep-water navigation

which includes a city with a population of more than 100,000, according to the last preceding federal census, may operate and develop ports and waterways inside the district and extending to the Gulf of Mexico.

(b) The district may acquire, purchase, take over, construct, maintain, operate, develop, and regulate wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants, lighterage, land, towing facilities, and other facilities or aids incident to or necessary to the operation or development of ports and waterways.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.152. PETITION. (a) If the board decides to exercise the rights, powers, and authority provided in this subchapter, it shall certify this desire to the commissioners court and shall submit a petition requesting that an election be held.

(b) The commissioners court shall schedule a hearing on the petition not less than 30 nor more than 60 days after the date of the petition. The hearing may be held at any place designated by the commissioners court.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.153. HEARING: TESTIMONY. Any person who may be affected may appear before the board on the day of the hearing and contest the necessity, advisability, or practicability of the election and may offer testimony in favor of or against the election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.154. ELECTION ORDER. After the hearing, if the board determines that the election should be held, the commissioners court shall order an election to determine whether or not the district should adopt the rights, powers, and authority provided in this subchapter. The order shall include the date on which the election will be held.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.155. BALLOTS. The ballots for the election shall be printed to provide for voting for or against the following proposition: "The development of the port by the navigation district."

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.156. ELECTION EXPENSE. The district shall pay the expense of the election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.157. DECLARATION OF RESULTS. If the result of the election favors the development of a port by the district, the commissioners court shall declare the result and shall enter in the minutes of the commissioners court the following declaration:

"Commissioners Court _____ County, Texas, _____ term A.D. _____, in the matter of the petition of the navigation board, requesting that the right, power, and authority be granted to the navigation district to develop the port of _____ (enter the name of the municipality). Be It Known, that at an election called for that purpose in the district, held on the _____ day of _____ A.D. _____, a two-thirds majority of the electors voting on the proposition voted to develop port facilities.

"Now, Therefore, It is considered and ordered by the commissioners court that the district is authorized to proceed with the development of the port as authorized by law."

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.158. APPOINTMENT OF COMMISSIONERS. (a) If the provisions of this subchapter are adopted by a district, the district shall be managed, governed, and controlled by a commission composed of five commissioners, who shall be subject to the supervision and control of the board.

(b) Two of the commissioners shall be appointed by a majority of the city council of the municipality having a population of 100,000 or more, and two of the commissioners shall be appointed by a majority of the commissioners court.

(c) The chairman of the commission shall be the fifth member and shall be elected by majority vote of the city council and commissioners court meeting in joint session called by the county judge.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.159. TERM OF OFFICE: REMOVAL: SUCCESSION. (a) Except for the original appointments, each commissioner shall serve for a term of two years and until his successor is qualified.

(b) One of the original appointees of the city council and one of the commissioners court shall serve for one year. The other original appointees shall serve for two years.

(c) Each commissioner shall serve his full term unless removed by the authority which appointed him. He may be removed for malfeasance, nonfeasance in office, inefficiency, or other sufficient cause.

(d) If a vacancy occurs through death, resignation, or other reason, the vacancy shall be filled in the manner provided for making the original appointment.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.160. QUALIFICATIONS; COMPENSATION; AUTHORITY. (a) Each commissioner shall be a freehold property taxpayer and a qualified elector in the district.

(b) Each commissioner shall execute a bond and shall subscribe the required oath.

(c) Each commissioner is entitled to receive the compensation provided by the board.

(d) A majority of the commissioners shall have the authority to act, and all acts of the commission are subject to the supervision of the board.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.161. EMINENT DOMAIN. (a) The district may exercise the power of eminent domain.

(b) A district created under this chapter may elect to take advantage of the condemnation procedure provided in Subchapter F of Chapter 51 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.162. LEASE AND RENTAL OF FACILITIES. A district may acquire and take over, by lease or rental agreements, for a period of not less than 25 years, the docks, wharves, buildings, railroads, land, improvements, and other facilities already provided, constructed, or owned by any incorporated municipality situated within the district only with the consent of the lawful authorities of the municipality and on terms mutually agreed on by the district and the municipality.

(1) No agreement for the use, acquisition, or operation of the property or facilities of the municipality by the district shall be for a lease or rental value which is more than the annual net revenue derived or to be derived by the district after payment of the expenses of operation and maintenance of the property and facilities.

(2) The district shall have no supervision or control over the property or facilities owned, controlled, or constructed by the municipality until agreement for the lease and rental of the property by the district has been made.

(3) A district that is leasing land or facilities from a municipality may purchase or acquire the property in the manner provided in this subchapter.

(4) The commission and the officials of the municipality shall be authorized to enter into an agreement stating the land and facilities to be acquired, the amount agreed on as the purchase price, and the terms of the sale.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.163. UNIMPROVED LAND. (a) A district which acquires, leases, or takes over unimproved land owned or controlled by any

incorporated municipality, may pay for the use, rental, or hire of the land a price or rental value to be fixed by the commission.

(b) If the commission fails or is unable to agree on terms and conditions for the use and rental of the unimproved land, then the district, through the power of eminent domain, may condemn the land or parts of the land which it thinks the interest of the district requires.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.164. FRANCHISES. (a) The district may grant franchises to persons or corporations on property owned or controlled by the district if the franchises are granted for purposes consistent with the provisions of this subchapter.

(b) No franchise shall be granted for longer than 50 years nor shall a franchise be granted except on the affirmative vote of a majority of the commissioners at three separate meetings of the commission which meetings may not be closer together than one week. The third meeting at which the commission votes to grant a franchise may not take place before the date the notice required by Subsection (c) is published for the third time.

(c) No franchise shall be granted until notice is published at the expense of the applicant, once a week for three consecutive weeks in a daily newspaper of general circulation published inside the district. For the purposes of this subsection, notice consists of:

(1) the text of the franchise in full; or

(2) a descriptive caption stating the purpose of the franchise and the location at which a complete copy of the franchise may be obtained.

(d) The franchise shall require the grantee to file a written acceptance within 30 days after the franchise is finally approved by the commission. Unless the district and the grantee agree on a later date, the effective date of the franchise is the date the grantee files the written acceptance with the commission.

(e) Nothing in this section shall be construed as preventing the district from granting revocable licenses or permits for the use of limited portions of waterfront or facilities for purposes consistent with this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Amended by Acts 1971, 62nd Leg., p. 1770, ch. 518, Sec. 15, eff. May 13, 1971.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 18, eff. June 17, 2011.
Acts 2017, 85th Leg., R.S., Ch. 1120 (S.B. 1129), Sec. 1, eff. September 1, 2017.

Sec. 61.165. FRANCHISE ELECTION. If the commission determines that a proposed franchise should be submitted to a vote of the people, it shall so certify to the commissioners court, and the commissioners court shall order an election on the matter at the earliest legal time.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.166. BALLOTS. (a) The ballot shall explain the nature of the franchise sufficiently to identify it.
(b) The ballots shall be printed to provide for voting for or against the following proposition: "The franchise."

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.167. ELECTION RESULT. If at the election a majority of those voting approve the franchise, it shall be granted. If those voting do not approve the franchise, it shall have no force and effect.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.168. PETITION PROTESTING FRANCHISE. The franchise may be suspended from taking effect if, before the date when the franchise is granted, a petition signed by qualified voters of the district equal to 10 percent of the total vote cast in the last general election for state officers is presented to the commissioners court protesting the enactment or granting of the franchise. Immediately after the petition is filed, the commissioners court

shall order an election on the proposed franchise. The election shall be governed by the provisions of Sections 61.164 and 61.165.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.169. CONTRACTS. The provisions governing the award of contracts by districts shall apply in all cases consistent with the provisions of this subchapter except that in case of emergency contracts may be let by the commission for not more than $5,000 without advertisement for bids. In case of urgent necessity or present calamity, advertisement for bids may be waived.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1977, 65th Leg., p. 804, ch. 299, Sec. 1, eff. Aug. 29, 1977.

Sec. 61.170. AUTHORITY TO INCUR DEBT. (a) The district may issue bonds for the purposes stated in Section 61.151 of this code and for the purpose of

(1) acquiring necessary land, rights-of-way, or dumping grounds;

(2) extension or improvement of belt railway lines; or

(3) construction of improvements, wharves, docks, or other facilities or aids to navigation.

(b) The obligations may be secured by liens on the property acquired, constructed, or improved. Available revenue may be pledged as additional security.

(c) The district may borrow funds for current expenses and may evidence the debt by warrants payable not later than the close of any calendar year for which the loans are made. The warrants shall never exceed the anticipated revenue.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.171. BONDS. (a) On compliance with the provisions of this subchapter the district may issue bonds to pay for the improvements and facilities and to acquire the property authorized in this subchapter.

(b) The district also may issue bonds to purchase wharves, docks, warehouses, bunkering facilities, belt railroads, land to be used for port purposes and development, or other facilities constructed or owned by the municipality.

(c) An election shall be held to approve the issuance of the bonds, and the bonds shall be issued in the manner provided by this chapter for issuing other bonds.

(d) The outstanding bonds and the additional bonds may not amount to more than 10 percent of the assessed value of real property in the district as shown by the last annual assessment made for the county and state.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.172. FINANCING PURCHASES. (a) The commission may have issued in the manner provided in this chapter bonds of the district in an amount that represents the purchase price of the land or facilities less any outstanding bonds previously issued by the municipality.

(b) The bonds shall be issued, registered, and sold in the same manner as other bonds of the district, and the proceeds shall be paid to the municipality.

(c) If the municipality has outstanding bonds, the district shall assume payment of these bonds and interest, and the commissioners court shall levy a tax sufficient to pay the interest due and the principal due at the maturity of the bonds. The taxes shall be collected as other taxes are now collected, and payment shall be made to the city by the commission on or before the due dates of interest and principal for the sole purpose of paying the interest on and principal of the outstanding bonds.

(d) The municipality shall not be released from any obligation to the owners and holders of any outstanding bonds issued on account of the land or facilities purchased.

(e) The municipality shall not levy, assess, and collect any tax for interest and sinking fund unless the payment from the district shall fail in whole or in part. In the event of such failure, the municipality shall levy and collect the tax necessary to discharge the interest and meet the principal of the outstanding bonds and shall continue to do so until the amounts are paid. Also,

the municipality may collect any and all amounts paid on account of the district from the district and in event of the continued failure to make the payments by the district, the municipality may take back the facilities.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.173. ELECTION ON THE PURCHASE OF FACILITIES. (a) No bonds shall be issued or tax levied until the question of purchase of the facilities is submitted to a vote of the people in the district.

(b) In addition to the requirement for submitting bonds to a vote, the notice of election shall include:

(1) a copy of the agreement;

(2) the amount of outstanding bonds;

(3) the amount of bonds sought to be issued by the district; and

(4) the amount of taxes required to be levied.

(c) The election shall be called and held in the same manner as other elections for bonds, and the ballots shall provide for voting for or against the proposition: "The purchase of municipal facilities and the issuance of bonds and levy of a tax to pay for the bonds."

(d) If the election should carry by a two-thirds vote of the electors voting at the election, then the proposition shall be declared carried and the bonds shall be issued and sold, and the necessary taxes levied in accordance with the provisions of this subchapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.174. EMPLOYEES; COUNTY AUDITOR, DUTIES AND COMPENSATION. (a) The commission may employ all persons necessary for the construction, maintenance, operation, and development of the business and facilities of the district and may prescribe their duties and fix their compensation.

(b) The county auditor, as auditor for the district having large port facilities, shall make such additional reports and perform such accounting services in addition to those now required by law as may be reasonably incident to the proper conduct of the business of

the district.

(c) Compensation for the county auditor who shall act under this section shall be determined by the judge of the district court or courts having jurisdiction in the county after a hearing with respect to the amount and value of the services performed. The amount shall be paid monthly from funds of the navigation district, and the maximum amount which may be allowed by the district judge for the services shall not be more than the amount now being paid.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.175. POWERS. (a) A district operating under this subchapter shall have all the rights, powers, and authority granted by this chapter and shall have all the authority granted by general or special law to navigation districts.

(b) A district operating under this subchapter shall also have the fullest powers consistent with the state constitution for the regulation of wharfage and of all facilities relating to the port, waterways, and district.

(c) The district may assess and collect charges for the use of all facilities acquired or constructed in accordance with the provisions of this subchapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.176. CITY POLICE POWERS. Nothing in this subchapter shall repeal or affect the police powers of any municipality inside the district, or any law, ordinance, or regulation authorizing and empowering the municipality to exercise the powers relating to any navigable stream or aids to navigation and facilities in a navigation district, not in conflict with this subchapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER F. GENERAL FISCAL PROVISIONS

Sec. 61.211. MAINTENANCE FUND. (a) After the district is created all expenses necessarily incurred after the petition was filed in connection with the creation, establishment, and maintenance

of the district shall be paid out of the construction and maintenance fund of the district.

(b) The fund shall consist of all money received from the sale of bonds and all other amounts received by the district from any source, except tax collections applied to the sinking fund and payment of interest on the navigation bonds.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.212. DISTRICT DEPOSITORY. The commission shall select a depository for the district as provided by Section 60.271.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1997, 75th Leg., ch. 1400, Sec. 2, eff. Sept. 1, 1997.

SUBCHAPTER G. BOND AND TAX PROVISIONS

Sec. 61.231. ISSUANCE OF BONDS. When the commission determines the cost of the proposed improvements, the expenses incident to the improvements, and the cost of maintenance of the improvements, it shall certify to the commissioners court the amount of bonds necessary to be issued. The commissioners court, at a regular or special meeting, shall issue an order directing the issuance of bonds for the district in the amount certified which shall not be more than the amount authorized by the election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.232. LIMITATION ON BOND ISSUE. Outstanding bonds and additional bonds which are authorized may not be more than one-fourth of the assessed value of the real property in the district, as shown by the last tax roll for the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 61.233. REQUISITES OF BONDS. (a) All bonds issued under the provisions of this subchapter shall be issued in the name of the district, signed by the county judge, and attested by the county clerk under the seal of the commissioners court.

(b) The bonds shall be issued in such denominations and payable at such time or times, not more than 40 years from their date, as the commissioners court considers expedient.

(c) All provisions of Chapter 57 of this code governing the approval, registration, and validity of bonds of levee improvement districts shall apply to bonds issued under this subchapter.

(d) The commissioners court or the board shall require a record to be kept of the bonds by the district treasurer the same as for bonds of levee improvement districts.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.234. SALE OF BONDS. (a) After the bonds are registered, the chairman of the commission shall offer them for sale and shall sell the bonds for the best price possible.

(b) Money received from the sale of the bonds shall be paid immediately to the district treasurer, and he shall deposit it to the credit of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.235. CHAIRMAN'S BOND. Before the chairman of the commission may sell the bonds, he shall execute a good bond, payable to the county judge and his successors, in an amount fixed by the commission, conditioned on the faithful discharge of his duties. The bond shall be approved by the county judge.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.236. TAX LEVY. (a) When bonds have been approved, the commissioners court annually shall levy and have assessed and collected improvement taxes sufficient to pay the interest on the bonds and to provide a sinking fund to redeem the bonds at maturity.

(b) The commissioners court shall also at the time of the levy

of taxes for county purposes, levy and have assessed and collected for the maintenance, operation, and upkeep of the district and its improvements an annual tax of not more than 10 cents on each $100 valuation.

(c) The commission shall determine a rate within the 10-cent limit as the necessary amount for the maintenance, operation, and upkeep of the district and its improvements. The rate shall be certified to the commissioners court by the commission.

(d) Taxes shall be levied on all property inside the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.237. ASSESSMENT AND COLLECTION OF TAXES. The tax assessor and collector of each county in the district shall assess and collect district taxes.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 61.238. ADDITIONAL BOND ISSUE. (a) If the proceeds of the original bonds are insufficient to complete the proposed improvements or construction, or if the commission decides to undertake further construction or improvements or requires additional funds with which to maintain the existing improvements, it shall certify to the commissioners court the necessity for an additional bond issue, stating:

(1) the amount required;

(2) the purpose of the additional bonds;

(3) the rate of interest on the bonds; and

(4) the term of the bonds.

(b) The commissioners court, on receipt of this information, shall issue the bonds, unless the amount previously authorized has been exhausted, in which case the commissioners court shall first order an election on the issuance of the bonds to be held inside the district at the earliest possible legal time.

(c) The ballots for the issuance of additional bonds shall be printed to provide for voting for or against the proposition: "The issuance of bonds and the levy of a tax to pay for the bonds."

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 61.239. SINKING FUND INVESTMENTS. The commissioners court may invest the sinking fund in county, municipal, district, or other bonds approved by the attorney general.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

CHAPTER 62. ARTICLE XVI, SECTION 59, NAVIGATION DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. DEFINITIONS. As used in this chapter:

(1) "District" means a navigation district operating under the provisions of Article XVI, Section 59, of the Texas Constitution.

(2) "Commission" means the navigation and canal commission.

(3) "Commissioner" means a navigation and canal commissioner.

(4) "Board" means the navigation board.

(5) "County of jurisdiction" means the county in which the district or the greater amount of acreage of the district is located.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 62.021. CREATION OF DISTRICT. A navigation district may be created in the manner prescribed by this subchapter under Article XVI, Section 59, of the Texas Constitution.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.022. COMPOSITION. A district may include within its boundaries all or part of villages, towns, cities, road districts, drainage districts, irrigation districts, levee districts, other improvement districts, and municipal corporations of any kind but may not include the territory of more than three counties or parts of three counties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.023. PETITION. (a) Any person may present a petition to the commissioners court in the county of jurisdiction, at a regular or special session, requesting the creation of a district.

(b) The petition shall be signed by 25 of the property taxpaying electors who reside inside the boundaries of the proposed district. If there are less than 75 property taxpaying electors who reside inside the boundaries of the proposed district, the petition shall be signed by one-third of them.

(c) The petition shall include:

(1) a request that the district be created;

(2) the boundaries of the district accompanied by a map;

(3) the general nature of the proposed improvements;

(4) an estimate of the probable cost of the improvements; and

(5) the name of the district, which shall include the name of the county.

(d) The petition shall be accompanied by an affidavit of the petitioners' qualifications.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.024. DEPOSIT. At the time the petition is filed with the commissioners court, the petitioner shall deposit $500 in cash with the clerk of the commissioners court. The clerk shall keep the deposit until after the result of the election to create the district is declared and entered in the record by the commissioners court.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.025. DATE OF HEARING. (a) On presentation of the petition, the commissioners court of the county of jurisdiction shall set it for a hearing at the regular term of the commissioners court or at a special session called for that purpose. The hearing shall be held not less than 30 nor more than 60 days from the day the petition is presented.

(b) If the hearing is required by Section 62.026 of this code, to be held by the navigation board, the commissioners court shall set

the hearing at the regular meeting place of the commissioners court not less than 30 nor more than 60 days from the day the petition is presented without reference to any term of the commissioners court.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.026. HEARING BEFORE THE BOARD. If the boundaries of a proposed district include all or part of a city or cities acting under special charter granted by the legislature, the hearing on the petition shall be held before the board.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.027. NOTICE OF HEARING. (a) The commissioners court shall order the clerk to post a copy of the petition together with the order of the commissioners court in five public places in the county, one of which shall be the courthouse door and four of which shall be in different places inside the limits of the proposed district. The notice shall be posted not less than 20 days before the time set for the hearing.

(b) If the district is composed of more than one county, a copy of the petition together with the order shall be posted at the courthouse door of each county in which any portion of the proposed district is located, and four copies shall be posted at four other places inside the included territory of each county.

(c) The clerk shall receive $1 as compensation for posting each notice and five cents a mile for each mile necessarily traveled in posting the notices.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.028. HEARING ON PETITION. (a) The commissioners court or the board has exclusive jurisdiction to hear and determine all contests and objections and other matters relating to creating a district and in all subsequent proceedings.

(b) Any person who has taxable property in the proposed district or who may be affected by the creation of the district may appear at the hearing and contest or support the creation of the

district, offer testimony for or against the boundaries, show that the proposed improvements would or would not be of any public utility and would or would not be practicable and feasible, present evidence of the probable cost of the improvements, or present any other matter relating to the district.

(c) The commissioners court or navigation board may adjourn the hearing from day to day, and judgments or decisions rendered by the commissioners court or the board are final except as otherwise provided by this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.029. FINDINGS. (a) If the commissioners court or the board finds that the improvements would be feasible and practicable and would be a public benefit and utility and approves the boundaries as set out in the petition, it shall compute the amount of money necessary for the improvements and all incidental expenses and shall determine whether to issue bonds for the full amount or for a smaller amount in the first instance.

(b) The commissioners court or the board shall specify:

(1) the amount of bonds to be issued;

(2) the length of time the bonds will run; and

(3) the rate of interest.

(c) The findings and specifications together with a map of the district shall be recorded in the minutes of the commissioners court or the board.

(d) If the commissioners court or the board does not approve the proposed boundaries of the district, it shall define the boundaries it considers correct. Before any change is made in the boundaries of the proposed district, notice shall be given and a hearing held as provided in Sections 62.027 and 62.028 of this code.

(e) If the commissioners court or the board finds that the improvements are unnecessary and would not be practicable or feasible and would not be a public benefit or utility, it shall enter these findings in the minutes and shall dismiss the petition at the cost of the petitioners. However, the dismissal of a petition does not prevent or conclude the presentation of a similar petition at a later date.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.030. ELECTION ORDER. (a) If the commissioners court or the board finds in favor of the petitioners for the creation of the district, the commissioners court of the county of jurisdiction shall order an election to be held inside the proposed district at the earliest legal time.

(b) The order of the court shall provide for submitting to the electors residing in the proposed district the question of whether or not the district will be created and whether or not proposed bonds will be issued and a tax levied sufficient to pay the interest and provide a sinking fund sufficient to redeem the bonds at maturity.

(c) The order shall specify:

(1) the amount of bonds to be issued;

(2) the length of time the bonds will run; and

(3) the rate of interest.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.031. NOTICE OF ELECTION. (a) The clerk of the commissioners court shall prepare notice of the election and shall post the notice for 30 days before the day set for the election.

(b) The notice shall be posted in the same places specified in Section 62.027 of this code.

(c) The notice shall state:

(1) the time and place of holding the election;

(2) the proposition to be voted on; and

(3) the purpose for which the bonds are to be issued and the amount of the bonds.

(d) The notice shall contain a copy of the order of the court ordering the election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.032. BALLOT. The ballot shall be printed to provide for voting for or against the proposition: "The creation of the navigation district and the issuance of bonds and levy of a tax for the payment of the bonds."

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.033. CONDUCT OF ELECTION. (a) The commissioners court shall issue an order creating and defining the voting precincts in the proposed district and shall name polling places within the precincts. In designating the polling places, the commissioners court shall take into consideration the convenience of the voters in the proposed district.

(b) The commissioners court shall select and appoint the judges and other necessary officers of election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.034. CANVASS OF RETURNS. (a) Immediately after the election, the election officers shall make returns of the result and return the ballot boxes to the clerk of the commissioners court of jurisdiction.

(b) The clerk shall deliver the boxes and the returns of the election to the commissioners court of jurisdiction at its next regular or special session.

(c) At that session, the commissioners court shall canvass the returns of the election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.035. DECLARATION OF RESULT. If a majority of the votes favor creating the district, issuing bonds, and levying a tax, the commissioners court shall declare the result and enter it in the minutes of the commissioners court as follows:

"Commissioners court of _____ County, Texas. _____ term A.D. _____, in the matter of the petition of _____ and _____ others requesting the creation of a navigation district, issuance of bonds, and levy of a tax in the petition described and designated by the name of _____ Navigation District. Be it known that at an election called for that purpose in the district, held on the _____ day of _____ A.D. _____, a majority of the electors voting voted in favor of the creation of the navigation district, the issuance of bonds, and the

levy of a tax. Now, therefore, it is considered and ordered by the commissioners court that the navigation district, be and the same is hereby established by the name of _____ Navigation District, and that bonds of the district in the amount of $_____ be issued, and a tax of _____ cents on the $100 valuation, or so much thereof as may be necessary to be levied upon all property within the navigation district, whether real, personal, mixed, or otherwise, sufficient in amount to pay the interest on the bonds and provide a sinking fund to redeem that at maturity, and that if the tax shall at any time become insufficient for these purposes it shall be increased until it is sufficient. The metes and bounds of the district are as follows: (Give metes and bounds)."

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.036. EXPENSES. (a) If the result of the election favors the creation of the district, the clerk shall return the $500 deposit required by Section 62.024 of this code to the signers of the original petition, their agents or their attorney.

(b) If the result of the election is against the creation of the district, the clerk shall pay out of the $500 deposit on vouchers signed by the county judge, all costs and expenses relating to the proposed district up to and including the election. The balance, if any, of the $500 shall be returned to the signers of the original petition, their agents, or their attorney.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 62.061. NAVIGATION BOARD. (a) The navigation board shall include the members of the commissioners court and the mayor and aldermen or commissioners of the included city or cities acting under special charter granted by the legislature. If there is only one city or part of one city acting under special charter granted by the legislature inside the proposed district and if the charter of the city at any time authorizes the city council or city board of commissioners to be greater in number than the members of the commissioners court, the number of aldermen or city commissioners who are entitled to sit and vote as members of the board along with the

mayor will be limited to that number which equals the number of members of the commissioners court. The aldermen or city commissioners entitled to act as members of the board shall be determined by the members of the city council or city board of commissioners among themselves.

(b) The county judge, and in his absence the mayor, shall preside at meetings of the board and each member of the board, including the presiding officer, is entitled to a vote.

(c) A majority of the members of the board constitute a quorum, and action of a majority of the quorum shall control.

(d) The county clerk shall enter the proceedings of the board in a book kept for that purpose, and the book shall be available for public inspection.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.062. APPOINTMENT OF INITIAL COMMISSIONERS. (a) After the creation of the district, the commissioners court or board shall appoint three navigation and canal commissioners who shall compose the navigation and canal commission.

(b) After the initial commissioners on the navigation and canal commission complete their terms, subsequent commissioners shall be elected.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.063. ELECTION OF COMMISSIONERS. (a) Commissioners shall be elected on the second Saturday in July of each odd-numbered year at an election ordered by the commission.

(b) The secretary of the commission shall give notice of the election by posting at least three copies of the notice at three public places inside the district or by publishing the notice for 20 days before the election in a newspaper with general circulation in the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.0631. APPOINTMENT OF COMMISSIONERS. (a) Instead of

electing commissioners as provided in Section 62.063 of this code, the commissioners court or board may appoint three navigation and canal commissioners to serve on the commission.

(b) The commissioners shall hold office for a term of two years and until their successors are appointed and have qualified.

(c) Commissioners may be removed from office by a majority of the commissioners court or the board for malfeasance or nonfeasance in office.

(d) Successors to members of the commission shall be appointed by a majority vote of the commissioners court or the board.

Added by Acts 1971, 62nd Leg., p. 1771, ch. 518, Sec. 18, eff. May 31, 1971.

Sec. 62.064. QUALIFICATIONS OF COMMISSIONERS. Each person who is appointed or elected commissioner shall be a resident of the proposed navigation district and shall be an elector of the county.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.065. TERM OF OFFICE. Commissioners shall hold office for staggered terms of six years and until their successors are elected and have qualified.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.066. VACANCIES. (a) A vacancy on the commission shall be filled by the remaining members of the commission.

(b) If two or more vacancies on the commission occur at the same time, a special election may be called on petition signed by 50 electors.

(c) Notice of the election shall be given by publishing or posting notice for at least 20 days before the election.

(d) The petition for the election shall include the names of the judges and clerks of the election, and the judges and clerks shall jointly canvass the returns, declare the result, and issue certificates of election to the successful candidates.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.067. REMOVAL FROM OFFICE. (a) A commissioner may be removed from office for malfeasance or nonfeasance in office by unanimous vote of the commissioners court or the board after a hearing held according to law.

(b) Appeal from a judgment of removal may be taken to a district court of the county in which the commissioner resides. The court shall try the case de novo.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.068. OATH OF COMMISSIONERS. (a) Before each commissioner begins to perform his duties, he shall take and subscribe before the county judge of the county of jurisdiction an oath to discharge faithfully the duties of his office without favor or partiality and to render a true account of his activities to the commissioners court of the county of jurisdiction or the board whenever required to do so.

(b) The oath shall be filed by the clerk of the commissioners court and preserved as part of the records of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.069. BOND OF COMMISSIONERS. Before a commissioner begins to perform his duties, he shall execute a good and sufficient bond for $1,000, payable to the county judge of the county of jurisdiction for the use and benefit of the district and conditioned on the faithful performance of his duties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.070. COMPENSATION OF COMMISSIONERS. Each commissioner shall receive for his services the compensation determined by the commissioners court of the county of jurisdiction.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.071. ORGANIZATION OF COMMISSION. (a) The commission shall organize by electing one of the members chairman and one secretary.

(b) Two of the commissioners constitute a quorum. A concurrence of two is sufficient in all matters relating to the business of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.072. TWO-COUNTY DISTRICTS; APPOINTMENT OF COMMISSION. (a) In a district composed of land in two or more counties, the commissioners court of the county of jurisdiction by a majority vote shall appoint one commissioner. The commissioners court of the other county included in whole or in part within the district shall appoint by a majority vote a second commissioner. The two commissioners courts shall appoint the third commissioner at a joint meeting of the two commissioners courts called and presided over by the county judge of the county of jurisdiction.

(b) Notice in writing of the joint meeting of commissioners courts shall be given by mail or delivered in person at least two days before the day set for the meeting.

(c) Each of the county judges and county commissioners composing the commissioners courts of both counties shall be entitled to one vote in appointing the third commissioner. A majority vote of those present at the meeting shall be sufficient to make the appointment.

(d) On the termination of the term of office of each commissioner or in case of vacancy, a successor shall be appointed by the same commissioners court which appointed the commissioner whose place is being filled.

(e) Except for the matters expressly provided for in this section, two-county districts are subject to all other provisions of this subchapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.0725. EXECUTIVE DIRECTOR. (a) The commission may

employ an executive director of the district. If the commission employs an executive director, the commission must prescribe the duties and compensation of the executive director.

(b) By rule, order, or resolution, the commission may delegate to an executive director the full authority necessary to manage the affairs of the district subject only to orders of the commission, including the authority to:

(1) employ persons necessary for the operation of the district and to determine the compensation of those persons; or

(2) perform any act on behalf of the district, as authorized by the commission.

(c) The duties of an executive director may be performed by a general manager or chief executive officer.

Added by Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 1, eff. May 22, 2019.

Sec. 62.073. DISTRICT TREASURER. The county treasurer of the county of jurisdiction shall be treasurer of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.074. TREASURER'S BOND. (a) The county treasurer shall execute a good and sufficient bond, payable to the commissioners, in an amount equal to twice the amount of funds he will hold at any time as treasurer of the district. The commissioners shall estimate the sum to be used as a basis for computing the amount of the required bond. The bond shall be conditioned for the faithful performance by the treasurer of his duties for the district and must be approved by the commissioners.

(b) When any bonds are voted by the district, the county treasurer, before receiving the proceeds from the sale of the bonds, shall execute an additional good and sufficient bond, payable to the commissioners, in an amount which is twice the amount of bonds issued. This additional bond shall be conditioned and approved in the same manner as the first but shall not be required after the treasurer has disbursed the proceeds of the bond issue.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.075. TREASURER'S COMPENSATION. The county treasurer shall be allowed as compensation for his services as treasurer of the district the amount determined by the commissioners. The compensation may not exceed the percentage authorized by law for his services as county treasurer.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.077. COUNSEL. (a) Repealed by Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 18(2), eff. May 22, 2019.

(b) The commission may employ counsel to represent the district in the preparation of any contract, to conduct any proceedings in or out of court, and to be the legal adviser of the commission on such terms as may be agreed upon by the commission.

(c) The fees of counsel shall be determined by the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 2, eff. May 22, 2019.

Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 3, eff. May 22, 2019.

Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 18(2), eff. May 22, 2019.

Sec. 62.078. SUITS; JUDICIAL NOTICE. (a) A district established under this chapter may, by and through the commission, sue and be sued in all courts of this state in the name of the district.

(b) All courts of this state shall take judicial notice of the establishment of all districts.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 62.101. PURPOSES OF DISTRICT. A district may be created

under this chapter to provide, in or adjacent to its boundaries, for:

(1) the improvement, preservation, and conservation of inland and coastal water for navigation;

(2) the control and distribution of storm water and floodwater of rivers and streams in aid of navigation; and

(3) any other purposes necessary or incidental to the navigation of inland and coastal water or in aid of these purposes, as stated in Article XVI, Section 59, of the Texas Constitution.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.102. DISTRICTS AS GOVERNMENTAL AGENCIES. All districts created under this chapter shall be governmental agencies and bodies politic and corporate with the powers of government and with the authority to exercise the rights, privileges, and functions which are essential to the accomplishment of those purposes.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.103. DUTIES OF COUNTY OFFICIALS. The powers and duties conferred by this chapter on the county judge, members of the commissioners court, the mayor and aldermen or commissioners of cities, the county clerk, and other officers are made a part of the legal duty of those officials. Unless otherwise provided in this chapter, these persons shall exercise and perform these powers and duties without additional compensation.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.104. DUTIES OF DISTRICT ENGINEER. It shall be the duty of the district engineer:

(1) to make all necessary surveys, examinations, investigations, maps, plans, and drawings with reference to proposed improvements;

(2) to make estimates of the cost of proposed improvements;

(3) to supervise the work of improvement; and

(4) to perform all duties which may be required of him by the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.105. RIGHT-OF-WAY. The commission may by gift, grant, purchase, or condemnation acquire the necessary right-of-way and property of any kind for all necessary improvements contemplated by this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.106. CONDEMNATION PROCEEDINGS. (a) The district may exercise the power of eminent domain to condemn and acquire the right-of-way over and through any and all public and private land necessary:

(1) for the improvement of any river, bay, creek, or stream;

(2) for the construction and maintenance of any canal or waterway; and

(3) for any and all purposes authorized by this chapter.

(b) Condemnation proceedings instituted under Subsection (a) of this section shall be instituted under the direction of the commission and in the name of the district. The assessment of damages shall be in conformity with the laws of the State of Texas for condemnation and acquisition of rights-of-way by railroads.

(c) No appeal from the finding and assessment of damages by the commissioners shall have the effect of causing a suspension of work by the commission in prosecuting the work of improvement in all of its details.

(d) No right-of-way may be condemned through any part of an incorporated city or town without the consent of the lawful authorities of that city or town.

(e) A district created under this chapter may elect to take advantage of the condemnation procedure provided in Subchapter F of Chapter 51 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.107. ACQUISITION AND CONVEYANCE OF LAND. (a) Any district created under this chapter may acquire by gift, purchase, or

condemnation and may own land adjacent or accessible by road, rail, or water to the navigable water and ports developed by it which may be necessary or required for any and all purposes incident to or necessary for the development and operation of the navigable water or ports within the district, or may be necessary or required for or in aid of the development of industries and businesses on the land.

(b) The district may lease and grant easements on any part of the acquired land to any person and may charge for the lease or easement reasonable tolls, rents, fees, or other charges. The lease or easement may be on terms and conditions considered appropriate or advantageous to the district. The district may use the proceeds both for the maintenance and operation of the business of the district and for the purpose of making the district self-supporting and financially solvent and returning the construction costs of the improvements within a reasonable period.

(c) The acquisition and leasing of land for the purposes included in this section and the operation and industrial and business development of ports and waterways are a public purpose and a matter of public necessity.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 19, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 15, eff. June 1, 2017.

Sec. 62.1071. ACQUISITION OF LAND, EQUIPMENT, OR IMPROVEMENTS IN CERTAIN COUNTIES. (a) This section applies only to a district that has a county of jurisdiction with a population of more than 2.8 million.

(b) A district may acquire, by any means except by condemnation, and own land, equipment, or improvements located in a county that is adjacent to the district's county of jurisdiction if the commission considers the land, equipment, or improvements:

(1) necessary, required, or convenient for any purpose necessary or incident to the development and operation of navigable water or a port located in the district's county of jurisdiction or a county adjacent to that county; or

(2) may be in aid of, or necessary, required, or convenient for, the development of industries and businesses on the land in the county of jurisdiction or a county adjacent to that county.

(c) Notwithstanding any other law or municipal charter, a district may acquire, and any public or private owner may dispose of, land, equipment, or improvements on any terms to which the commission and the property owner agree.

(d) If in connection with an acquisition or disposition of land, equipment, or improvements under this section the governing body of a municipality decides to discontinue operations of a port, as a utility of the municipality or otherwise, the acquisition or disposition of the land, equipment, or improvements may not be completed until a majority of the qualified voters of the municipality voting at an election called and held for that purpose approve of the discontinuance of the operations.

(e) The commissioners may change the name of the district in connection with the acquisition of land, equipment, or improvements under this section.

(f) Notwithstanding the source of the revenue, a district that acquires land, equipment, or improvements under this section may use or pledge to the payment of obligations of the district for the development of any district facility, regardless of the location of the facility, any revenue of the district, except as provided by Section 62.209.

(g) Section 41.001(a), Election Code, does not apply to an election held under this section.

(h) Except as provided by this section, an election held under this section must be conducted as provided by the Election Code.

Added by Acts 1999, 76th Leg., ch. 504, Sec. 1, eff. June 18, 1999.

Sec. 62.1072. ADDITIONAL COMMISSIONERS FOR ACQUISITIONS FROM CERTAIN MUNICIPALITIES. (a) A district that acquires land, equipment, or improvements under Section 62.1071 from a municipality with a population of more than 35,000 that operates navigation and port facilities and that is located in a county adjacent to the county of jurisdiction may add positions for members of the commission, as determined by the commission. Not more than two positions may be added to the commission under this section.

(b) The governing body of the municipality in which the acquired land, equipment, or improvements are located shall appoint the additional commissioners.

(c) Commissioners serving in the positions added under Subsection (a) shall serve terms that are consistent with the law governing the terms of the other commissioners.

Added by Acts 1999, 76th Leg., ch. 504, Sec. 1, eff. June 18, 1999.

Sec. 62.108. ENTRY ON PROPERTY. The commissioners and the engineers of a district together with all necessary teams, help, tools, and instruments may go on any land inside the district to examine the land and to make plans, surveys, maps, and profiles without subjecting themselves to the action of trespass.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.109. BIDS. (a) Any person, corporation, or firm which desires to bid on the construction of any work advertised under Section 62.110 of this code shall, on application to the commission, be furnished the survey, plans, and estimates for the work.

(b) All bids or offers for the work shall be in writing, sealed, and delivered to the chairman of the commission together with a certified check for at least five percent of the total amount of the bid.

(c) If a bid is accepted but the bidder refuses to enter into a proper contract, the deposit required by Subsection (b) of this section shall be forfeited to the district.

(d) Any and all bids may be rejected at the discretion of the commission.

(e) A district may take advantage of the bid procedure in Sections 63.168-63.170 of this code by passing a simple resolution and entering it in its minutes.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.110. NOTICE OF BIDS. Notice that a contract is to be awarded shall be given by publishing notice once a week for two

consecutive weeks in one or more newspapers with general circulation in the state and by posting notice for at least 14 days in five public places in the county of jurisdiction, one of which shall be the courthouse door and at least two of which shall be inside the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1977, 65th Leg., p. 805, ch. 299, Sec. 2, eff. Aug. 29, 1977.

Sec. 62.111. AWARD OF CONTRACT. (a) All contracts for improvements, except those carried out and performed by the government of the United States, shall be awarded by the commission to the lowest and best responsible bidder.

(b) Nothing in this section shall prevent the making of more than one improvement. Where more than one improvement is to be made, a contract may be awarded separately for each improvement or one contract may be awarded for all the improvements.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.112. INTEREST IN CONTRACTS. No county judge or county commissioner of any county in a district, board member, or district engineer may be directly or indirectly interested for himself or as agent for another in a contract for the construction of work to be performed by the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.113. FORM OF CONTRACTS. All contracts made by the district shall be in writing and signed by the contractors, the executive director of the district, an authorized representative of the executive director, or a person to whom the duties of executive director have been delegated.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1330 (S.B. 1531), Sec. 10, eff.

June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 4, eff. May 22, 2019.

Sec. 62.114. BOND OF CONTRACTOR. (a) The party, firm, or corporation to whom a contract is awarded under Section 62.111 of this code shall execute a bond, payable to the commission, for twice the amount of the contract price, conditioned on faithful performance of the obligations, agreements, and covenants of the contract and that in default of the performance he will pay to the district all damages sustained by reason of the default.

(b) The bond shall be approved by the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.115. SUPERVISION OF WORK. (a) Unless done under the supervision of the United States, all work contracted for by the district shall be done under the supervision of a representative of the district.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 18(3), eff. May 22, 2019.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 5, eff. May 22, 2019.

Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 6, eff. May 22, 2019.

Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 18(3), eff. May 22, 2019.

Sec. 62.116. INSPECTION OF WORK; PAYMENT. (a) A representative of the district shall inspect the progress of work being done under a contract, and on completion of the contract, the district's chief financial officer shall draw a warrant on the county treasurer or issue a check payable to the contractor or the contractor's assignee for the amount of the contract price. The warrant or check shall be paid out of the construction and

maintenance fund or the operating fund of the district.

(b) If the district considers it advisable, the district may contract for work to be paid for in partial payments as the work progresses. The amount of work completed at the time of the partial payment shall be shown by a certificate of a representative of the district.

(c) Nothing in this section shall affect the provisions of this chapter providing for the construction of any improvements by the United States.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1971, 62nd Leg., p. 1770, ch. 518, Sec. 16, eff. May 31, 1971.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 7, eff. May 22, 2019.

Sec. 62.117. ANNUAL REPORT. (a) The commission shall make an annual report of its official acts and file it with the clerk of the commissioners court on or before January 1 of each year.

(b) The report shall include in detail:

(1) the kind, character, and amount of work done in the district;

(2) the cost of the work;

(3) the amount paid out on order and for what purpose paid; and

(4) other data necessary to show the condition of improvements made under the provisions of this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.118. COOPERATION WITH UNITED STATES. (a) If a river, creek, stream, bay, canal, or waterway to be improved is navigable or the proposed improvement is of a nature which requires the permission or consent of the United States, the commission may obtain the required permission or consent of the United States.

(b) Instead of or in addition to employing an engineer as provided in Section 62.076 of this code the commission may:

(1) adopt any survey of a river, creek, canal, stream, bay,

or waterway previously made by the United States;

(2) arrange for surveys, examinations, and investigations of the proposed improvement; and

(3) arrange for supervision of the work of improvement by the United States.

(c) The commission may cooperate and act with the United States in any and all matters relating to the construction and maintenance of canals and the improvement and navigation of navigable rivers, bays, creeks, streams, canals, and waterways.

(d) The authority to cooperate shall extend to surveys, work, or expenditures of money made or to be made either by the commission or by the United States.

(e) The United States may aid in all such matters, and the commission shall have authority to consent to the United States entering on and taking management and control of the work where necessary or permissible under the laws, regulations, and orders of the United States.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.119. PREFERENCE LIEN; WAIVER; ENFORCEMENT. (a) If a district leases, rents, furnishes, or supplies water to any person, association of persons, water improvement district, or corporation for the purpose of irrigation, the district shall have, without regard to contract, a preference lien superior to every other lien on the crop or crops raised on the land which is irrigated.

(b) If any district obtains a water supply under contract with the United States, the board of directors of the district may, by resolution entered in the minutes and with consent of the secretary of the interior, waive the preference lien, in whole or in part.

(c) For the enforcement of the lien provided in Subsection (a) of this section, all districts are entitled to all the rights and remedies prescribed by Title 84, Revised Civil Statutes of Texas, 1925, as amended, for the enforcement of the lien between landlord and tenant.

(d) The authority granted by this section shall be cumulative of, and in addition to, the authority granted by other laws.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.120. CONTRACT FOR AND LEASE OF WATER SYSTEM. (a) A district may enter into operating contracts and leases with cities and other governmental subdivisions for the operation of the portions of the district's water system which are designated by the board.

(b) To the extent that the proceeds of revenue bonds were used to acquire the portion leased, the annual payments paid by the lessee to the district shall be in a sum which is sufficient to permit the district to pay the proportionate part of the principal, interest, reserves, and other requirements provided by the bond proceedings on any revenue bonds which were issued to acquire the leased properties.

(c) Bonds issued to acquire, improve, enlarge, or extend leased properties may mature serially or otherwise not more than 50 years from their date of issue.

Added by Acts 1971, 62nd Leg., p. 1625, ch. 452, Sec. 2, eff. May 26, 1971.

Sec. 62.121. CONTRACTS AND OBLIGATIONS TO ACCOMPLISH DISTRICT PURPOSES AND EXERCISE DISTRICT POWERS. (a) A district may enter into a contract with any person, including a municipality or other political subdivision in a county adjacent to the district, in order to accomplish any district purpose or exercise any district power.

(b) As part of a contract under this section, a district may issue obligations, including obligations secured by ad valorem taxes, and use the proceeds of such obligations to provide a project located in a county adjacent to the district that serves to accomplish a district purpose or exercise a district power in such county.

Added by Acts 2005, 79th Leg., Ch. 426 (S.B. 1786), Sec. 5, eff. September 1, 2005.

Sec. 62.122. DISPOSITION OF SALVAGE OR SURPLUS PERSONAL PROPERTY. (a) Except as provided by Subsection (b), the commission may periodically dispose of surplus or salvage personal property in the same manner as the commissioners court of a county under Subchapter D, Chapter 263, Local Government Code.

(b) The commission may authorize the destruction or disposition of salvage or surplus property as worthless if the property is so worn, damaged, or obsolete that it has no value for the purpose for

which it was originally intended, and the expense to the district to attempt to sell the property would be more than the proceeds from the sale.

Added by Acts 2007, 80th Leg., R.S., Ch. 1330 (S.B. 1531), Sec. 11, eff. June 15, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 20, eff. June 17, 2011.

Sec. 62.123. FRANCHISES. (a) A district may grant franchises for purposes consistent with this chapter to any person on property owned or controlled by the district by restrictive covenant or otherwise.

(b) No franchise shall be granted for longer than 50 years nor shall a franchise be granted except on the affirmative vote of a majority of the commissioners present at three separate meetings of the commission which meetings may not be closer together than one week.

(c) No franchise shall be granted until notice of the franchise is published at the expense of the applicant, once a week for three consecutive weeks in a daily newspaper of general circulation in the district. For the purposes of this subsection, notice consists of:

(1) the text of the franchise in final form in all material respects; or

(2) a descriptive caption stating the purpose of the franchise and the location at which a complete copy of the franchise in all material respects may be obtained.

(d) The franchise shall require the grantee to file the grantee's written acceptance within 30 days after the franchise is finally approved by the commission.

(e) Nothing in this section shall be construed as preventing the district from granting revocable licenses or permits for the use of limited portions of waterfront or facilities for purposes consistent with this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 16, eff. June 1, 2017.

SUBCHAPTER E. GENERAL FISCAL PROVISIONS

Sec. 62.151. CONSTRUCTION AND MAINTENANCE FUND. (a) The construction and maintenance fund shall include money received from the sale of bonds and all other sources except tax collections placed in the sinking fund to pay the principal of and the interest on bonds.

(b) After the original petition is filed, all expenses necessarily incurred in connection with the creation, establishment, and maintenance of the district shall be paid from the construction and maintenance fund.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.152. PAYMENT OF EXPENSES. The district may draw warrants or issue checks:

(1) to pay for services;

(2) to pay the compensation of employees; and

(3) to pay all expenses incident to operation of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 8, eff. May 22, 2019.

Sec. 62.153. DUTIES OF DISTRICT TREASURER; AUTHORITY OF DESIGNATED OFFICER. (a) The district treasurer shall:

(1) open an account for all funds received by the district treasurer for the district and all district funds which the treasurer pays out;

(2) pay out money on vouchers signed by the chairman of the commission, any two members of the commission, or the commissioners court, or any two of any number of persons delegated by the commission with authority to sign vouchers, provided that the commission may, in such delegation, limit the authority of such persons and may require that each furnish a fidelity bond in such amount as the commission shall specify and subject to commission approval;

(3) carefully preserve all orders for the payment of money;

and

(4) render a correct account to the commissioners court of all matters relating to the financial condition of the district as often as required by the commissioners court.

(b) The district treasurer is not required to sign a check drawn on a depository selected under Section 62.156, unless the district treasurer is the designated officer of the district, as defined by Section 60.271(g).

(c) A designated officer of a district may make a payment on behalf of the district by a check drawn on a depository selected under Section 62.155 in a manner consistent with the payment procedures adopted under Section 60.271(f) without authorization by the district treasurer.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1975, 64th Leg., p. 1915, ch. 618, Sec. 1, eff. Sept. 1, 1975.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 398 (S.B. 1131), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 17, eff. June 1, 2017.

Reenacted and amended by Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 9, eff. May 22, 2019.
Reenacted by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 17.003, eff. September 1, 2019.

Sec. 62.154. APPLICABILITY OF SECTIONS 62.155-62.159. Sections 62.155-62.159 of this code apply to all revenue, income, money, funds, or increments except revenue derived from taxation which may result from the ownership and operation of the district's improvements and facilities. However, these sections do not apply to any of the following counties:

(1) Matagorda;
(2) Fort Bend;
(3) Brazoria;
(4) Chambers;
(5) Galveston; and
(6) Harris.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.155. DEPOSIT IN BANKING CORPORATION. (a) Instead of depositing the revenue of the district in the manner provided by law for districts, the commission may deposit the revenue in a banking corporation in the manner provided in Section 62.156 of this code.

(b) On selection of a banking corporation by the commission under Subsection (a) of this section, revenue of the district held by anyone other than the selected banking corporation, on order of the commission, shall be deposited in the selected banking corporation to the credit of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.156. SELECTION OF DEPOSITORY. The commission shall select a depository as provided by Section 60.271.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1997, 75th Leg., ch. 1400, Sec. 3, eff. Sept. 1, 1997.

Sec. 62.159. CONFLICTS WITH PRIOR BONDS OR OTHER LAWS. If Sections 62.154-62.158 of this code conflict with the provisions of any bonds issued by a district and secured in whole or in part by a pledge of revenue, with the proceedings authorizing the bonds, or with any special act relating to one specific district, the bonds, proceedings, and special act shall control over these sections.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.160. MAINTENANCE TAX. The commissioners courts of the respective counties inside each district may levy and have assessed and collected for the maintenance, operation, and upkeep of the district and the improvements constructed by the district an annual tax not to exceed 10 cents on the $100 valuation on all property inside the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER F. BOND PROVISIONS

Sec. 62.191. ISSUANCE OF NAVIGATION BONDS. (a) After the commission determines the cost of proposed improvements, incidental expenses, and maintenance costs, it shall certify to the commissioners court of the county of jurisdiction the amount of bonds necessary to be issued.

(b) The commissioners court, at a regular or special meeting, shall issue an order directing the issuance of navigation bonds for the district in the amount so certified. The amount of bonds may not be more than the amount authorized by the election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.192. ISSUANCE OF ADDITIONAL BONDS. (a) If the proceeds of bonds issued by a district are insufficient to complete the proposed improvement or construction, if the commissioners decide to begin other and further construction or improvements, or if additional funds are required to maintain the improvements made, the commission shall certify to the commissioners court the necessity for an additional bond issue.

(b) Unless the amount previously authorized has been exhausted, the commissioners court shall issue the bonds.

(c) The certification to the court shall state:

(1) the amount of bonds required;

(2) the purpose of the bonds;

(3) the rate of interest; and

(4) the length of time for which the bonds are to run.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.193. BOND ELECTION. (a) If the authorized amount of bonds is exhausted, the commissioners court shall order an election on the issuance of additional bonds to be held in the district at the earliest legal time.

(b) The ballots shall be printed to provide for voting for or against the proposition: "The issuance of bonds and the levy of a

tax to pay for the bonds."

(c) Notice shall be given, the election conducted, and the returns canvassed in the manner provided for the original bond election in Subchapter B of this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.194. ORDER FOR BONDS AND TAX. If on the canvass of the vote it is determined that a majority of the votes cast at the election were in favor of the issuance of bonds and levy of tax, the commissioners court shall issue an order directing the issuance of the bonds and the levy of a tax.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.195. FORM OF BONDS. (a) Bonds issued under the provisions of this chapter shall be issued in the name of the district, signed by the county judge of the county of jurisdiction, and attested by the county clerk of the county of jurisdiction with the seal of the commissioners court of the county of jurisdiction affixed to them.

(b) The bonds shall be issued in the denominations and payable at the time or times, not more than 40 years from their date, which may be considered most expedient by the commissioners court.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.196. DUTIES OF ATTORNEY GENERAL. (a) Before the bonds are offered for sale, the district shall send to the attorney general:

(1) a copy of the bonds to be issued;

(2) a certified copy of the order of the commissioners court levying the tax;

(3) a copy of the order of the commissioners court levying the tax to pay interest and provide a sinking fund;

(4) a statement of the total bonded indebtedness of the district, including the series of bonds proposed and the assessed value of property for the purpose of taxation, as shown by the last

official assessment by the district or, if the district has made no prior assessment, the last official assessment by the county; and

(5) other information which the attorney general may require.

(b) The attorney general shall carefully examine the bonds in connection with the facts, the constitution, and the laws on the execution of the bonds.

(c) If as the result of the examination the attorney general finds that the bonds were issued in conformity with the constitution and laws and that they are valid and binding obligations on the district, he shall officially certify the bonds.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 62.197. REGISTRATION OF BONDS. After the bonds have been examined by the attorney general and his certificate issued, they shall be registered by the comptroller in a book to be kept for that purpose, and the certificate of the attorney general shall be preserved in the record for use in the event of litigation.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.198. VALIDITY OF BONDS. (a) After the bonds have been approved by the attorney general and registered by the comptroller, they shall be held in every action, suit, or proceeding in which their validity is or may be brought in question prima facie valid and binding obligations.

(b) In every action brought to enforce collection of bonds or interest on them, the certificate of the attorney general, or a duly certified copy of it, shall be admitted and received as prima facie evidence of the validity of the bonds and the coupons attached.

(c) The only defense that can be offered against the validity of the bonds or coupons is forgery or fraud.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.199. RECORD OF BONDS. (a) After bonds have been issued under the provisions of this chapter, the board shall procure and deliver to the treasurer of the county of jurisdiction a well-bound book in which a record shall be kept of all the bonds.

(b) A record shall be kept in the book of:

(1) the bond numbers and amount of the bonds;

(2) the rate of interest;

(3) the date of issuance and the date when the bonds are due and where payable;

(4) the proceeds from the bonds;

(5) the tax levy to pay interest on and to provide a sinking fund for bond payment; and

(6) any payment of a bond.

(c) The book shall at all times be open to the inspection of interested parties, either taxpayers, bondholders, or otherwise, in the district.

(d) The county treasurer shall receive for his services in recording these matters the same fees which are allowed by law to the county clerk for similar records.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.200. SALE OF BONDS. (a) After the bonds have been registered, the chairman of the commission shall offer the bonds for sale and shall sell the bonds on the best terms and for the best price possible. None of the bonds shall be sold for less than face par value and accrued interest.

(b) After money is received from the sale of bonds, it shall be paid to the county treasurer and he shall place it to the credit of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.201. CHAIRMAN'S BOND. Before the chairman of the commission may sell any bonds, he shall execute a good and sufficient bond, payable to the county judge or his successors in office. The bond shall be approved by the commissioners court and shall be for an amount not less than the amount of the bonds issued, and shall be conditioned on the faithful discharge of his duties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.202. TAXES; SINKING FUND INVESTMENT. (a) After district bonds have been voted, the commissioners court shall levy and have assessed and collected on all property in the district taxes sufficient in amount to pay the interest on the bonds and to annually deposit an amount in the sinking fund sufficient to discharge and redeem the bonds at their maturity.

(b) If advisable, the sinking fund shall from time to time be invested by the commissioners court in county, municipal, district, or other bonds which may be approved by the attorney general.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.203. ISSUANCE OF REFUNDING BONDS; FORMALITIES. (a) A district which has outstanding bonds may, by order of the commissioners court of the county of jurisdiction and without submitting the proposition to an election, authorize and issue its refunding bonds for the purpose of retiring all or any part of its outstanding bonds.

(b) The refunding bonds may mature serially or otherwise in not more than 40 years from their date.

(c) The refunding bonds shall be executed in the name of the district by the county judge and county clerk under the seal of the commissioners court and shall in other respects have the details and be issued in the manner provided by the commissioners court in the order authorizing the bonds.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.204. REFUNDING BONDS SOLD AT PAR. The refunding bonds shall be sold by the commission at not less than their par value, delivered to the holders of not less than a like par amount of the bonds of the district authorized to be refunded in exchange for the prior bond obligations, or sold in part and exchanged in part.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.205. APPROVAL OF REFUNDING BONDS BY ATTORNEY GENERAL. The refunding bonds shall be submitted to the attorney general for approval and shall be registered by the comptroller in the same manner and with the same effect as is now provided by law for the approval and registration of municipal bonds.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.206. TAX LEVY FOR REFUNDING BONDS. (a) If a district issues refunding bonds, the district shall annually levy taxes on all taxable property in the district sufficient to pay interest on the bonds as it becomes due and to pay the principal of the bonds at maturity.

(b) In making the annual levies, the district may take into consideration estimated delinquencies based on tax collection experience over the preceding years and levy the taxes in an amount, after deduction of estimated delinquencies, sufficient to pay principal and interest requirements and the cost of tax collection.

(c) In its discretion and so far as consistent with the rights of the holders of the bonds refunded, a district may pledge to the payment of the refunding bonds the proceeds of taxes levied for payment of the bonds refunded and delinquent at the time of the authorization of the refunding bonds, cash or securities in the sinking fund maintained for payment of the bonds refunded, or both.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.207. AUTHORITY OF SECTIONS 62.203-62.206. Sections 62.203-62.206 of this code shall, without reference to other laws, constitute full authority for the issuance of refunding bonds. No proceedings, publications, elections, or referendums other than those required in Sections 62.203-62.206 shall be necessary to the authorization and issuance of refunding bonds.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.208. REVENUE BONDS. (a) A district may issue revenue bonds on the terms and under the provisions of Chapter 111, Acts of

the 43rd Legislature, 1st Called Session, 1933, or Chapter 38, Acts of the 47th Legislature, Regular Session, 1941:

(1) to purchase, construct, improve, enlarge, extend, and repair dams, reservoirs, water rights, water wells, desalinization facilities, canals, pipelines, pumps, pump stations, land, easements, rights-of-way, and other property and facilities necessary to provide a water supply for the irrigation of land and for industrial, commercial, domestic, municipal, and other beneficial uses;

(2) to accomplish any of the purposes designated in the previously mentioned two acts; and

(3) for general improvement purposes without designating the improvement.

(b) If the bonds are issued for the purposes stated in Subsection (a)(1) of this section, the district may own and operate the facilities and sell and deliver water to any person. The properties and facilities, the uses for the water supply, and the purchasers of the water may be inside or outside the boundaries of the district but may not be inside the boundaries of any other previously created navigation district or flood control district.

(c) If the bonds are issued for general improvement purposes, the proceeds may be spent for any purpose designated in this section.

(d) As each installment of an authorized issue of bonds is prepared for delivery, the commission shall specify the particular purposes for which the proceeds of that installment will be spent.

(e) A district may enter into operating contracts and leases with responsible persons or corporations for the operation of those portions of the district's water distribution system which the commission may designate. In that case, the annual rentals to be paid to the district by the lessee shall be a sum sufficient to permit the district to meet its obligations for the payment of that proportionate part of any revenue bonds, including principal, interest, reserves, and other requirements provided in the bond proceedings, which were issued to acquire the leased properties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 18, eff. June 1, 2017.

Sec. 62.209. USE OF BOND PROCEEDS FOR CERTAIN ACQUISITIONS OF CERTAIN DISTRICTS. A district to which Section 62.1071 applies may not spend for the acquisition of land, equipment, or improvements under that section the proceeds of bonds authorized by the district's voters before the district undertakes the acquisition.

Added by Acts 1999, 76th Leg., ch. 504, Sec. 2, eff. June 18, 1999.

SUBCHAPTER G. TAX PROVISIONS

Sec. 62.251. ASSESSMENT AND COLLECTION OF TAXES. The assessor and collector of each county in which the district is located shall assess and collect the taxes levied by the district in the county.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

SUBCHAPTER H. ANNEXATION

Sec. 62.291. ANNEXATION AUTHORITY. A district created under this chapter or converted from a district created under Article III, Section 52, of the Texas Constitution, into a conservation and reclamation district under Article XVI, Section 59, of the Texas Constitution, may extend its boundaries and annex adjacent territory.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.292. PETITION. Before territory is annexed to the district, a petition signed by 50 or a majority of the electors residing in the adjacent territory proposed to be annexed shall be presented to the commission, requesting an election in the adjacent territory to determine whether or not the territory will be annexed and whether or not it will assume its pro rata part of the outstanding bonded debt of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.293. SCHEDULING PETITION FOR HEARING; NOTICE. (a)

After a petition is presented under Section 62.292 of this code, the commission shall set the petition for a hearing to be held within 10 days from the date of presentation of the petition.

(b) Notice of the hearing shall be posted at three public places in the territory proposed to be annexed for at least five days before the hearing on the petition. The notice shall include the time and place of the hearing and the boundaries of the territory proposed to be annexed.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.294. HEARING. The commission shall hold the hearing on the subject of annexation of adjacent territory by the district, and any person who has taxable property in the territory proposed to be annexed may appear in person or by counsel and offer testimony or argument for or against the inclusion of all or any part of the land proposed to be annexed.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.295. ELECTION ORDER. If after the hearing the commission finds that inclusion of the territory proposed to be annexed would be a direct benefit to all the land in that territory, the commission shall order an election to be held in the territory proposed to be annexed.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.296. NOTICE OF ELECTION. (a) The election shall be held not less than 20 nor more than 30 days from the day of the election order and after notice is given.

(b) Notice of the election shall be published once a week for 20 days immediately preceding the election in some newspaper published in the territory proposed to be annexed. If no newspaper is published in the territory, notice shall be posted in three public places inside the territory for at least 20 days immediately preceding the election.

(c) The notice:

(1) shall give the time and place or places for holding the election;

(2) shall give the boundaries of the territory proposed to be annexed; and

(3) may contain the substance of the order of the commission ordering the election.

(d) The secretary of the commission shall have the notice published or posted.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.297. BALLOTS. The ballots for the election shall be printed to allow for voting for or against: "Annexation to the navigation district."; and "Assumption of a pro rata part of the bonded debt of the navigation district."

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.298. ELECTION OFFICIALS. The commission shall appoint one judge and two clerks for each election box or place to hold the election. The judge and clerks shall be electors in the territory proposed to be annexed and shall reside near the place for holding the election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.299. CANVASS OF VOTE; ENTRY OF ORDER. (a) The election judges shall certify the election returns to the commission, and the commission shall canvass the returns.

(b) If a majority of the electors voting at the election favor annexation and assumption of the pro rata part of the bonded debt of the district, the commission shall enter an order in its minutes annexing the territory, and from and after the entry of the order, the annexed territory shall be a part of the district with all the rights, benefits, and burdens of property originally situated in the district.

(c) If a majority of the electors voting at the election favor annexation and the proposition to assume the bonded debt fails to

carry, the commission shall enter an order in its minutes annexing the territory to the district, and from and after the entry of the order, the annexed territory shall be a part of the district with the exception of the assumption of the outstanding bonded indebtedness. The annexed territory shall be subject to a tax for maintenance and operation and shall be liable for all other bonded indebtedness and other indebtedness thereafter legally imposed by the district.

(d) After an order of annexation has been entered in the minutes of the commission, a certified copy of the order shall be prepared by the secretary of the commission and shall include the boundaries of the territory annexed. The secretary shall record the order or have it be recorded in the real estate records of the county or counties in which the territory is located.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.300. AUTHORITY TO ANNEX OTHER DISTRICTS. Except as otherwise provided by this subchapter, a district created under Article XVI, Section 59, of the Texas Constitution may be annexed and become a part of another adjacent district created under the general law in the same manner as provided in Sections 62.292-62.299 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.301. DUTIES OF COMMISSION OF ANNEXED DISTRICT. If a district proposes to annex an adjacent district, the commission of the district proposed to be annexed shall:

(1) conduct the hearing;

(2) order the election;

(3) canvass the returns of the election; and

(4) perform the other duties and procedures provided in Sections 62.292-62.299 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.302. CERTIFICATION OF ELECTION RESULTS. If the election in a district proposed to be annexed results in a majority

of the votes of the electors voting at the election favoring annexation, the commission of the district proposed to be annexed shall certify the election result together with the metes and bounds of the district to the commission of the annexing district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.303. HEARING BY ANNEXING DISTRICT; NOTICE. (a) When the election result is certified to the commission of the annexing district, the commission of the annexing district shall conduct a hearing to determine whether or not it will be a benefit to the annexing district to annex the territory.

(b) The hearing shall be conducted after the commission has given five days' notice in some newspaper published in the annexing district.

(c) If it is found at the hearing that the annexation of the adjacent district would be a benefit to the territory of the annexing district, the commission shall enter an order in its minutes annexing the district and from and after the entry of the order, the adjacent district shall be a part of the annexing district with all rights and privileges of territory originally situated in the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.304. ASSUMPTION OF BONDED DEBT. (a) Unless a majority of the electors of each of the districts approves it, the annexing district and the district to be annexed may not assume the outstanding bonded debt of the other.

(b) Annexation shall in no way affect the outstanding debt or any other valid obligation of either the annexing district or the district to be annexed.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.305. LEVY OF TAXES ON ANNEXED DISTRICT. The commission of the annexing district shall annually levy and collect sufficient taxes in the district to be annexed to discharge all valid outstanding obligations of the district to be annexed.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.306. DISSOLUTION OF ANNEXED DISTRICT. From and after the entry of the order annexing the district, the annexed district shall be dissolved. All powers previously vested in the annexed district and the commission of the annexed district shall be vested, respectively, in the annexing district and the commission of the annexing district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.307. ANNEXATION OF WHOLE OF ADJACENT COUNTY. If the territory included inside the boundaries of the annexing district consists of all of a single county and the territory to be annexed consists of all of an adjacent county, the adjacent territory may be annexed in the manner provided in Sections 62.291-62.306 of this code, except the commissioners court of the county to be annexed shall:

(1) conduct the hearing;

(2) order the election;

(3) canvass the returns of the election; and

(4) perform all other duties provided by this subchapter for the commission of the annexing district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.308. HEARING. The commissioners court of the county to be annexed shall conduct the hearing at some place inside the county to be annexed.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.309. ORDER OF ELECTION; BALLOTS. The commissioners court of the county to be annexed may order an election, as requested in the petition for hearing, on either or both propositions included in the ballot form in Section 62.297 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.310. CERTIFICATION OF ELECTION RESULT. If the proposition or propositions carries by a majority of the vote of the electors voting at the election, the commissioners court of the county to be annexed shall certify the election result to the commission of the annexing district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.311. HEARING BY ANNEXING DISTRICT. After the certification of the election result, and after five days' notice in some newspaper published inside the annexing district, the annexing district shall conduct a public hearing to determine whether or not it would be a benefit to the annexing district to annex the adjacent county.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.312. ORDER OF ANNEXATION. If at the hearing it appears that annexation of the adjacent county would be a benefit to the annexing district, the commission shall enter an order in the minutes annexing the county. From and after the entry of the order, the county shall be a part of the annexing district with all rights and privileges of territory originally situated in the district and with the right of representation on the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.313. OBLIGATIONS NOT AFFECTED; PRO RATA ASSUMPTION. (a) Except as provided in Subsection (b) of this section, annexation shall in no way affect the bonded debt or any other valid outstanding obligation of the annexing district.

(b) If the voters at the annexation election in the county annexed vote to assume a pro rata part of the bonded debt of the annexing district, pro rata assumption shall be binding. If that proposition is not approved by a majority of those electors voting in

the election, the persons and property within the county annexed shall never be bound to the payment of any debt of the annexing district outstanding at the time of annexation.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.314. ADDITIONAL COMMISSION MEMBERS. (a) From and after the entry of the order of annexation, the commission shall be constituted as provided in this section.

(b) The commissioners court of the annexed county shall appoint two commissioners, both of whom shall be electors who reside in the district. The two commission members shall be additional members of the commission of the district and shall have the same duties and receive the same compensation as incumbent commission members.

(c) The additional commission members shall hold office for a term equal to and expiring with the terms of the incumbent commission members or, if the members of the commission are serving staggered terms, expiring with the term of the commission member whose term first expires.

(d) At the expiration of the terms of the additional commission members, the terms of all commission members shall be automatically terminated.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.315. CHANGE OF MEMBERSHIP OF NAVIGATION BOARD. (a) After the annexation, the board shall be composed of the county judges and commissioners courts of the county of the annexing district and of the annexed county.

(b) Each individual member of the board shall be entitled to a vote and a majority in number of the individuals composing the board shall constitute a quorum. The action of a majority of the quorum shall control.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.316. PERMANENT COMMISSION ORGANIZATION FOLLOWING ANNEXATION. (a) After the expiration and termination of the terms

of commission members as provided for in Section 62.314 of this code, the commission shall be organized as provided by this section.

(b) The commission shall be managed, governed, and controlled by five commission members.

(c) The commissioners courts of the county of the annexing district and of the annexed county shall each, by majority vote, appoint two commission members for a term of two years.

(d) At the expiration of the term of office of each commission member, the commissioners court which appointed that member shall, by majority vote, appoint a successor for a term of two years.

(e) The fifth commission member shall be chairman and shall serve for a term of two years. He shall be selected by a majority vote of the board of the district and appointed by the board.

(f) If any vacancy occurs through the death, resignation, or otherwise of any commission member, it shall be filled as in the first instance by appointment for the unexpired term.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.317. PROVISIONS GOVERNING COMMISSION. (a) Each commissioner appointed under Section 62.314 or 62.316 of this code shall be an elector of the district and shall serve his full term and until his successor is elected and has qualified unless sooner removed by the authority which appointed him for malfeasance or nonfeasance in office.

(b) Each commissioner shall execute a bond, take the oath, and have the powers and duties prescribed by the law applicable to the annexing district at the time of the annexation.

(c) Each commissioner is entitled to receive the compensation determined by the board.

(d) The commission, by majority vote, may execute all contracts and take all actions relating to governing the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.318. LAW GOVERNING DISTRICT. (a) The only changes made in the organization and operation of an annexing district which annexes an adjacent county are those contained in this subchapter.

(b) Each district annexing an adjacent county shall continue

after the annexation to be governed by and subject to all of the laws applicable to the annexing district at the time of annexation.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

CHAPTER 63. SELF-LIQUIDATING NAVIGATION DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 63.001. DEFINITIONS. As used in this chapter:

(1) "District" means a self-liquidating navigation district.

(2) "Board" means the navigation board.

(3) "Commission" means the board of navigation and canal commissioners.

(4) "Commissioner" means a member of the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION OF DISTRICT

Sec. 63.021. SELF-LIQUIDATING DISTRICTS. (a) All navigation districts organized under the provisions of Article XVI, Section 59, of the Texas Constitution, and the provisions of Chapter 62 of this code, or organized under any local and special law enacted under the provisions of Article XVI, Section 59, of the Texas Constitution, which have voted bonds but have not issued or disposed of the bonds, and all districts organized under the provisions of this chapter are self-liquidating in character and may be made self-supporting and return the construction cost of the district within a reasonable period by tolls, rents, fees, assessments, or other charges other than taxation.

(b) The district shall be considered as coming originally within the scope of this chapter, and the proceedings in Sections 63.039-63.044 of this code are not required as a prerequisite to the exercise of the rights, powers, privileges, and benefits of this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.022. CREATION. A district of the character provided in

Section 63.021 of this code may be created as provided in this chapter to operate under the provisions of Article XVI, Section 59, of the Texas Constitution.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.023. AREA INCLUDED IN DISTRICT. A district may include all or part of a village, town, city, road district, drainage district, irrigation district, levee district, other improvement district, conservation and reclamation district, or municipal corporation, but may not include more than all or parts of two counties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.024. PETITION TO CREATE SINGLE-COUNTY DISTRICT. (a) To create a district located wholly in one county, a petition signed by 25 of the electors, or if there are fewer than 75 electors in the proposed district, by one-third of them, shall be presented at any regular or special session of the commissioners court of the county in which the land to be included in the district is located.

(b) The petition shall include:

(1) a request for the establishment of a district;

(2) a description of the boundaries of the proposed district, accompanied by a map;

(3) a statement of the general nature of the improvements proposed;

(4) an estimate of the probable cost; and

(5) the designation of a name for the district which shall include the name of the county.

(c) A deposit of $500 and an affidavit stating the qualifications of the petitioners shall accompany the petition.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.025. PETITION TO CREATE DISTRICT IN TWO COUNTIES. (a) If the proposed district is located in two counties, a petition of the nature provided in Section 63.024 shall be presented to the

commissioners court of the county which includes the greater part of the district, and this county shall be the county of jurisdiction with relation to all matters concerning the district.

(b) The petition shall be signed by 25 residents in the territory of each county to be included in the proposed district or if there are fewer than 75 residents in the territory of either of the counties, then by one-third of the residents and shall be accompanied by a deposit of $500.

(c) The name of the district shall include the name of the county which has jurisdiction.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.026. NAVIGATION BOARD. (a) The navigation board shall include the county judge and the members of the commissioners court and the mayor and the aldermen or commissioners of the city or cities.

(b) A majority in number of the persons composing the board shall constitute a quorum, and the action of a majority of the quorum shall control.

(c) The board shall pass on the petition to create the district and the election to approve creation of the district with each individual member having one vote.

(d) The duties and powers of the county judge and members of the commissioners court, the mayor and aldermen or commissioners of cities, and the county clerk and other officers are a part of the legal duties of the officials which they shall perform without additional compensation, unless otherwise provided in this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.027. HEARING. At the same session the petition is presented, the commissioners court shall order a hearing to be held at a regular or special session of the commissioners court, not less than 60 days from the date the petition is presented.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.028. NOTICE OF HEARING. (a) The commissioners court shall order the clerk to give notice of the date and place of the hearing by posting a copy of the petition and the order of the commissioners court at the courthouse door and at four other public places inside the boundaries of the proposed district.

(b) If the district is composed of more than one county, the notices provided in Subsection (a) of this section shall be posted in each county.

(c) The notices shall be posted not less than 20 days immediately preceding the day set for the hearing.

(d) The clerk is entitled to receive $1 for each notice he posts and five cents a mile for each mile necessarily traveled to post the notices.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.029. HEARING BY NAVIGATION BOARD. (a) If the proposed district includes all or part of a city acting under special charter granted by the legislature, the hearing shall be held before the board at the regular meeting place of the commissioners court.

(b) The commissioners court shall order a hearing before the board not less than 30 nor more than 60 days from the day the petition is presented without reference to any term of the court, and notice of the hearing shall be given as provided in Section 63.028.

(c) The county clerk shall record the proceedings of the board in the book kept for that purpose, and this record shall be available for public inspection.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.030. CONDUCT OF HEARING. (a) The commissioners court or the board has exclusive jurisdiction to hear and determine all contests and objections to the creation of the proposed district and all matters relating to the creation of the proposed district.

(b) The commissioners court or the board may adjourn the hearing from day to day, and all judgments or decisions shall be final unless otherwise provided in this chapter.

(c) Any person who has taxable property in the proposed district or who might be affected by creation of the district may

appear at the hearing and support or oppose creation of the proposed district and may offer testimony relating to:

(1) the necessity and feasibility of the proposed district;

(2) the benefits to accrue from formation of the proposed district;

(3) the boundaries of the proposed district; or

(4) any other matter concerning the proposed district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.031. FINDINGS. (a) If it appears at the hearing that the proposed improvements are feasible and practicable and would be a public benefit and utility, the commissioners court or the board shall make these findings and approve the boundaries stated in the petition, or if it does not approve the boundaries in the petition, the court or board shall define the boundaries of the district which are approved.

(b) Changes may not be made in the proposed boundaries until notice is given and a hearing held in the manner provided in this subchapter.

(c) If the commissioners court or board finds that the proposed improvement is not feasible or practicable, or that it would not be a public benefit or public utility and that the establishment of the district is unnecessary, the court or board shall make these findings and dismiss the petition at the cost of petitioners. Dismissal of the petition shall not prevent presentation of another petition at a later date.

(d) The commissioners court or the board shall enter all findings in its records or minutes, together with a map of the district if the boundaries in the petition are changed.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.032. PROVIDING FUNDS FOR PROPOSED IMPROVEMENTS. (a) If the commissioners court or the board approves the boundaries in the petition or as changed and decides to grant the petition, it shall determine the amount of money necessary for the improvements and all expenses connected with the improvements and whether to issue bonds for the full amount or, in the first instance, for a less

amount.

(b) The commissioners court or the board shall specify the amount of bonds to be issued, the maximum term for which the bonds will run, and the rate of interest.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.033. ELECTION ORDER. (a) If the commissioners court or the board finds in favor of the creation of the district, the commissioners court of the county of jurisdiction shall order an election and submit to the electors residing in the district the proposition of whether or not the district shall be created and whether or not the bonds shall be issued and a tax levied sufficient to pay the interest and provide a sinking fund to redeem the bonds at maturity.

(b) The election order shall specify the amount of the bonds to be issued, the term for which the bonds will run, and the rate of interest.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.034. NOTICE OF ELECTION. (a) The clerk of the court of jurisdiction shall give notice of the election by posting notices at the courthouse door of the county in which the district is located and at four other public places in the proposed district.

(b) If the district is composed of more than one county, the notices shall be posted in each county.

(c) The notices shall be posted for 30 days immediately preceding the time set for the election.

(d) The notices shall include:

(1) the time and place of the election;

(2) the proposition to be voted on;

(3) the purpose for which the bonds are to be issued;

(4) the amount of the bonds; and

(5) a copy of the election order.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.035. BALLOTS. The ballots for the election shall be printed to provide for voting for or against: "The navigation district and the issuance of bonds and the levy of a tax to pay for the bonds."

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.036. CONDUCT OF ELECTION. The commissioners court shall create and define, by order, the voting precincts in the district and shall name convenient polling places in the precincts. It shall appoint the judges and other necessary election officials and shall hold the election at the earliest legal time.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.037. RETURNS OF ELECTION. (a) Immediately after the election, the officers holding the election shall make returns of the result to the commissioners court of jurisdiction and return the ballot boxes to the clerk of the court.

(b) The clerk shall keep the ballot boxes safely and deliver them, together with the returns of the election, to the commissioners court at its next regular or special session.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.038. DECLARATION OF RESULT. The court shall canvass the vote and return at the session when it receives the ballot boxes and returns of the election. If it finds that a majority of those voting at the election voted in favor of the proposition, the court shall declare the result of the election to be in favor of the district, issuance of the bonds, and the levy of the tax, and shall enter the following declaration in its minutes:

"Commissioners Court of _____ County, Texas, _____ term A.D. _____, in the matter of the petition of _____ and _____ and others praying for the establishment of a navigation district, and issuance of bonds and levy of taxes in said petition described and designated by the name of _____ Navigation District. Be it known that at an election called for the purpose in

said district, held on the _____ day of _____ A.D. _____ a majority of the electors voting thereon voted in favor of the creation of said navigation district, and the issuance of bonds and levy of a tax. Now, therefore, it is considered and ordered by the court that said navigation district be, and the same is hereby established by the name of _____ Navigation District, and that bonds of said district in the amount of _____ dollars be issued, and a tax of _____ cents on the $100, valuation, or so much thereof as may be necessary to be levied upon all property within said navigation district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund to redeem that at maturity, and that if said tax shall at any time become insufficient for such purpose same shall be increased until same is sufficient. The metes and bounds of said district being as follows: (Giving metes and bounds)."

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.039. CONVERSION OF DISTRICT. Any navigation district organized under the provisions of Article XVI, Section 59, of the Texas Constitution, or Article III, Section 52, of the Texas Constitution, and not originally within the scope of this chapter, may be converted into a self-liquidating district operating under this chapter in the manner provided in Sections 63.040-63.044 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.040. RESOLUTION TO CONVERT. (a) The commission, by resolution entered in the minutes, shall declare that in its judgment it is for the best interest of the district and will benefit the land and property in the district to operate under the provisions of this chapter, permitting the district to become self-liquidating and to return the construction cost within a reasonable period by means of tolls, rents, fees, assessments, or other charges other than taxation.

(b) The commission shall designate in the resolution the sections of this chapter under which the district wishes to operate.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.041. NOTICE. (a) Notice of the adoption of a resolution under Section 63.040 of this code shall be given by publishing the resolution in a newspaper with general circulation in the county or counties in which the district is located.

(b) The notice shall be published once a week for two consecutive weeks with the first publication not less than 14 full days before the day set for a hearing.

(c) The notice shall:

(1) state the time and place of the hearing;

(2) set out the resolution in full; and

(3) notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.042. HEARING. The hearing may be adjourned from day to day until all interested persons have had an opportunity to appear and present testimony.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.043. FINDINGS. (a) If at the hearing the commission finds that conversion of the district into a district operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, it shall enter an order making this finding.

(b) If the commission finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, it shall enter an order against conversion of the district into one operating under this chapter.

(c) The adverse findings of the commission shall be final and not subject to appeal or review.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.044. EFFECT OF CONVERSION. If the finding of the commission is favorable to the resolution, the commission shall have the same right, power, and authority to act under the provisions of this chapter adopted by the resolution as if the district had originally come within the scope of this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 63.081. APPOINTMENT OF COMMISSIONERS. After a district is created, the commissioners court shall appoint three navigation and canal commissioners, whose duties are provided in this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.082. QUALIFICATIONS. To be qualified for appointment as a commissioner, a person must be a resident of the district, a freehold property taxpayer, and a qualified elector of the county.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.083. VACANCIES. All vacancies in the office of appointed commissioner occurring through death, resignation, or otherwise shall be filled by the remaining commissioners or, if only one commissioner remains, by the remaining commissioner and the district judge residing in the county in which a majority of the acreage of the district is located.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.084. OATH. In addition to the constitutional oath provided for county commissioners, before beginning to perform his duties each appointed commissioner shall take and subscribe before the county judge of the county of jurisdiction an oath to discharge faithfully the duties of his office without favor or partiality.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.085. BOND. Before beginning to perform his duties, each appointed commissioner shall execute a good and sufficient bond for $1,000, payable to the county judge of the county of jurisdiction for the use and benefit of the district, conditioned on the faithful performance of his duties.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.086. TERM OF OFFICE. Each commissioner shall hold office for four years and until his successor has qualified after appointment or election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1983, 68th Leg., p. 5217, ch. 951, Sec. 14, eff. Jan. 1, 1984.

Sec. 63.087. OPTIONAL TERM OF OFFICE. (a) The commission may provide by resolution for six-year staggered terms of office for commissioners with the term of one commissioner expiring every two years.

(b) At the first election of commissioners after a resolution is adopted under this section, three commissioners shall be elected. After the commissioners have taken the oath of office and executed bonds, they shall draw lots to determine who will serve for a two-year term, who will serve for a four-year term, and who will serve for a six-year term.

(c) Successors to the commissioners elected under the provisions of Subsection (b) of this section shall serve for full six-year terms.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.088. COMMISSION ORGANIZATION AND QUORUM. The commission shall organize by electing one of their members chairman and one secretary. Two of the commissioners shall constitute a quorum and a concurrence of two shall be sufficient in all matters

relating to the business of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.089. ELECTION OF COMMISSIONERS. (a) An election shall be held in the district on the first Tuesday after the first Monday in November of each even numbered year to elect the three commissioners. However, the commissioners may, by adopting an order duly entered on the minutes, determine to hold the election on the first Tuesday after the first Monday in October of each even numbered year to elect the commissioners authorized by law.

(b) Section 41.001(a), Election Code, requiring that certain elections be held on specified uniform dates, and Section 41.003, Election Code, allowing only certain elections to be held on the date of the general election for state and county officers, do not apply to the election provided for in this section.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1971, 62nd Leg., p. 1984, ch. 612, art. 1, Sec. 9, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1129, ch. 427, Sec. 1, eff. June 14, 1973; Acts 1977, 65th Leg., p. 1978, ch. 791, Sec. 1, eff. Aug. 29, 1977; Acts 1991, 72nd Leg., ch. 522, Sec. 1, eff. Sept. 1, 1991.

Sec. 63.0895. JOINT ELECTION WITH COUNTY. (a) The commission of a district that is situated wholly in one county and that holds its commissioners' election on the first Tuesday after the first Monday in November of each even-numbered year may, by adopting an order duly entered on the minutes, elect to hold the commissioners' election jointly with the general election for state and county officers as provided by this section. Not later than the 90th day before election day, a copy of the order shall be mailed to the county election officer.

(b) The commission shall order the commissioners' election not later than the 70th day before election day.

(c) The commission shall give notice of the commissioners' election in the manner provided by Section 63.093(a) of this code. The notice must state the official mailing address to which voters of the district may mail applications for absentee ballots to be voted

by mail. The notice shall be published once a week for two consecutive weeks in a newspaper published in the district or, if a newspaper is not published in the district, in a newspaper of general circulation in the district. The first publication shall be made not later than the 65th day nor earlier than the 70th day before election day.

(d) A candidate for the office of commissioner must file documents as required by Title 15, Election Code, with the secretary.

(e) A candidate for commissioner must file an application for a place on the ballot with the secretary not later than 5 p.m. of the 56th day before election day. In addition, a candidate's name may be placed on the ballot by petition of 20 or more qualified electors of the district filed with the secretary by the filing deadline.

(f) The county election officer shall establish the election precincts for the commissioners' election. The election precincts shall be coterminous with county election precincts to the extent permitted by district boundaries.

(g) The county commissioners court shall designate common polling places in the appropriate county election precincts for use in the joint election. The voters of the district may be served by a polling place located outside the boundary of the district if the location can adequately and conveniently serve the affected voters and will facilitate the orderly conduct of the election.

(h) The county election officer is the absentee voting clerk for the commissioners' election.

(i) An election officer, including a member of the absentee ballot board, appointed to serve in the general election for state and county officers shall serve in the same office in the commissioners' election. A person who is eligible to serve as an election officer in the general election for state and county officers is eligible to serve in the same office in the commissioners' election.

(j) The county election officer, subject to the approval of the county election board, shall procure, allocate, and distribute the equipment, ballots, forms, list of registered voters, and other materials necessary to conduct the commissioners' election.

(k) The county election officer shall prepare a single ballot containing all the offices to be voted on at a common polling place. The office of commissioner shall appear on the ballot after the precinct offices of the county government. The secretary shall

certify in writing for placement on the ballot the name and address of each candidate for the office of commissioner. The certification shall be delivered to the county election officer not later than the 55th day before election day.

(l) If an election precinct established under Subsection (f) of this section consists of only part of a county election precinct, the county election officer shall deliver to the presiding election judge a current description of the district boundary and a map, if a map is available. The county election officer shall deliver the district boundary information not later than the 30th day before election day.

(m) The secretary of state shall prescribe any procedures necessary to ensure that a voter is permitted to vote on the office of commissioner only if the voter is a resident of the district.

(n) One set of ballot boxes shall be used at a common polling place for the deposit of ballots. The forms and records maintained at a common polling place shall be combined in a manner convenient and adequate to record and report the results of each election.

(o) The county election officer is the general custodian of election records for the commissioners' election.

(p) The precinct election returns for the joint election shall be canvassed by the county commissioners court. The county judge shall promptly deliver the results of the commissioners' election to the commission.

(q) The commission shall issue a certificate of election to a candidate elected to the office of commissioner.

(r) The county election officer and election officers, including members of the absentee ballot board, appointed to serve in the general election for state and county officers, are entitled to additional compensation for serving in the commissioners' election only if additional compensation is provided by the commission.

(s) The commission shall reimburse the county election officer for the expenses incurred in the conduct of the joint election that would not have been incurred if the general election for state and county officers had been held separately from the commissioners' election.

(t) Sections 63.090, 63.091, 63.092, 63.093(b), and 63.094 of this chapter do not apply to a commissioners' election held under this section.

(u) In this section, "county election officer" means the county elections administrator in counties having that position, the county

tax assessor-collector in counties in which the county clerk's election duties and functions have been transferred to the tax assessor-collector, and the county clerk in other counties.

Added by Acts 1991, 72nd Leg., ch. 522, Sec. 2, eff. Sept. 1, 1991.

Sec. 63.090. PLACING NAMES OF CANDIDATES ON BALLOT. A candidate for commissioner must file an application with the secretary not later than 5 p.m. of the 45th day before the date of the election to have the candidate's name printed on the ballot. Also, a candidate's name may be placed on the ballot by petition of 20 or more qualified electors of the district filed with the secretary by the deadline stated in the preceding sentence.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1977, 65th Leg., p. 1978, ch. 791, Sec. 2, eff. Aug. 29, 1977; Acts 1989, 71st Leg., ch. 1009, Sec. 5, eff. Sept. 1, 1989.

Sec. 63.091. POLLING PLACE. The commission shall designate the polling place or places in the election order. If more than one polling place is required, the board shall divide the district into election precincts, which may be changed from time to time.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.092. ELECTION OFFICERS. The commission shall appoint the election officers, consisting of one presiding judge, an assistant judge, and two clerks, when the election is ordered. Additional clerks may be appointed by the presiding judge when necessary.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.093. NOTICE OF ELECTION. (a) The notice of the election shall be signed by the president and secretary of the commission and shall contain a copy of the election order.

(b) The notice shall be published once a week for four consecutive weeks in a newspaper published in the district or, if a newspaper is not published in the district, in a newspaper located nearest to the boundaries of the district. The first publication shall be made not less than 32 days nor more than 46 days before the day of the election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1977, 65th Leg., p. 1978, ch. 791, Sec. 3, eff. Aug. 29, 1977.

Sec. 63.094. CONDUCT OF ELECTION. (a) The election officers shall make and deliver the returns in triplicate. One copy shall be retained by the presiding judge, one shall be delivered to the chairman of the commission, and one shall be delivered to the secretary.

(b) The ballot boxes and other election records and supplies shall be delivered to the secretary at the office of the district. All boxes containing voted or mutilated ballots shall be preserved for six months, subject to the order of any court in which an election contest is filed. The ballot boxes shall be destroyed after six months unless a contrary order is entered by a court of competent jurisdiction.

(c) The commission shall meet and canvass the returns of the election not less than five full days nor more than seven days after the election. If the returns cannot be canvassed within seven days, they shall be canvassed as soon as possible after seven days.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.0945. WRITE-IN CANDIDATES. (a) In an election to elect a commissioner, a write-in vote may not be counted unless the name written in appears on the list of write-in candidates.

(b) To be entitled to a place on the list of write-in candidates, a candidate must make a declaration of write-in candidacy.

(c) A declaration of write-in candidacy must be filed with the authority with whom an application for a place on the ballot is required to be filed in the election.

(d) A declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election.

(e) Subchapter B, Chapter 146, Election Code, applies to write-in voting in an election to elect a commissioner except to the extent of a conflict with this subchapter.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1318, Sec. 51(4), eff. September 1, 2011.

Added by Acts 1997, 75th Leg., ch. 1343, Sec. 3, eff. June 20, 1997.
Amended by Acts 2003, 78th Leg., ch. 925, Sec. 8, eff. Nov. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1109 (H.B. 2339), Sec. 35, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1318 (S.B. 100), Sec. 48, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1318 (S.B. 100), Sec. 51(4), eff. September 1, 2011.

Sec. 63.095. VACANCIES ON COMMISSION. (a) A vacancy in the office of elected commissioner shall be filled by appointment by the commission itself for the unexpired term.

(b) If two vacancies occur at the same time, the remaining commissioner shall call a special election to fill the vacancies.

(c) If the remaining commissioner fails to call a special election within 15 days after the vacancies occur, or if the third place is vacant also, the judge of the district court of the judicial district in which the district is located may order the election on the petition of any voter or creditor of the district. The district judge shall fix the date of the election, order the publication of notice of the election by the county clerk, and name the officers to hold the election. The returns of an election held by order of the district judge shall be made and filed in the office of the clerk of the district court, and the clerk shall declare the result of the election.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.096. COMMISSIONER'S OATH. Each commissioner shall

subscribe an oath of office containing the applicable conditions provided by law for members of the commissioners court.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.097. COMMISSIONER'S BOND. (a) Each commissioner shall execute a good and sufficient bond for $1,000, payable to the district, conditioned on the faithful performance of his duties.

(b) The commissioner's bond shall be approved by the commission and by the district judge of the district court which has jurisdiction over the territory of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1973, 63rd Leg., p. 1129, ch. 427, Sec. 2, eff. June 14, 1973.

Sec. 63.098. COMMISSIONER'S COMPENSATION. (a) Each commissioner shall receive a fee of not more than $50 a day for each day of service necessary to the discharge of his duties, unless otherwise provided in accordance with Subsection (b) of this section.

(b) The commission may provide by an order entered in its minutes that compensation shall not be paid for the commissioners' services for a period of more than two years from the date of the order.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1971, 62nd Leg., p. 1984, ch. 612, art. 1, Sec. 10, eff. Sept. 1, 1971; Acts 1977, 65th Leg., p. 159, ch. 79, Sec. 1, eff. April 25, 1977.

Sec. 63.099. DISTRICT MANAGER. (a) The commission may employ a general manager and give him full authority in the management and operation of the affairs of the district, subject only to the supervision of the commission.

(b) The commission shall fix the term of office and compensation of the manager.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.100. DISTRICT ASSESSOR AND COLLECTOR. The commission shall appoint one person to the office of assessor and collector for the district. The assessor and collector shall be a qualified elector and a resident of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.101. DEPUTY ASSESSOR AND COLLECTOR. The commission may appoint one or more deputies to assist the assessor and collector for a period of not more than one year.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.103. DEPUTY'S BOND. The assistant or assistants to the assessor and collector appointed by the commission may or may not be required to furnish bond with conditions similar to those required of the assessor and collector.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.104. COMPENSATION OF ASSESSOR AND COLLECTOR AND DEPUTY. The commission shall fix the compensation to be paid to the tax assessor and collector or any deputy.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.1045. EXECUTIVE DIRECTOR. (a) The district may employ an executive director of the district. If the district employs an executive director, the district must prescribe the duties and compensation of the executive director.

(b) The duties of an executive director may be performed by a general manager, port director, or chief executive officer.

Added by Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 10, eff. May 22, 2019.

Sec. 63.105. ENGINEER. The district may employ a competent engineer whose term of office and compensation shall be determined by the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 11, eff. May 22, 2019.

Sec. 63.106. LEGAL COUNSEL. The commission may employ an attorney to represent the district in preparation of any contract, to conduct any proceeding in or out of court, to be the legal advisor of the commission, and to perform any other function considered necessary. The attorney shall be retained on the terms and for the fees which the commission determines and on which the parties agree.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.107. DISTRICT EMPLOYEES. (a) The district:

(1) may employ assistant engineers and other persons as it considers necessary for the construction, maintenance, operation, and development of the district and its business and facilities; and

(2) shall determine their term of office and duties and fix their compensation.

(b) All employees may be removed by the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 12, eff. May 22, 2019.

Sec. 63.108. BONDS OF OFFICERS AND EMPLOYEES. (a) Each officer and employee charged with the handling of funds or property of the district shall furnish a good and sufficient bond for a sum sufficient to safeguard the district as determined by the commission. The bond shall be payable to the district and conditioned on the

faithful performance of his duties and his accounting of all funds and property of the district coming into his hands.

(b) The bonds of other officers of the district shall be approved by the commission and shall be filed for record in the office of the district. The bonds shall be recorded in a book kept for that purpose in the office of the district, and the book shall be open to the inspection of the public during the office hours of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.109. PAYMENT OF COMPENSATION AND EXPENSES. The district may draw warrants, issue checks, or use a payment method adopted under Section 60.271 to pay for:

(1) services;

(2) the compensation of employees; and

(3) all expenses incident and relating to the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 13, eff. May 22, 2019.

Sec. 63.110. DISTRICT OFFICE. A regular office shall be maintained for the conduct of the business of the district at a place in the district designated by the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.112. COURT ACTIONS. (a) A district established under this chapter may sue and be sued, by and through its commission, in any court in this state in the name of the district.

(b) The courts of this state shall take judicial notice of the establishment of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 63.151. AUTHORITY OF DISTRICT. All districts created under this chapter are essential to the accomplishment of the provisions of Article XVI, Section 59, of the Texas Constitution, and are governmental agencies and bodies politic and corporate, with the powers of government and authority to exercise the rights, privileges, and functions conferred in this chapter and by the Texas Constitution.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.152. PURPOSES OF DISTRICT. The district may make improvements for:

(1) the navigation of inland and coastal water;

(2) the preservation and conservation of inland and coastal water for navigation;

(3) the control and distribution of storm water and floodwater of rivers and streams in aid of navigation; or

(4) any purpose stated in Article XVI, Section 59, of the Texas Constitution, necessary or incidental to the navigation of inland and coastal water.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.153. GENERAL AUTHORITY OF DISTRICT. A district may:

(1) exercise all the rights, powers, and authority granted by this chapter and by the general and special laws relating to navigation districts;

(2) exercise all powers relating to regulation of wharfage and facilities connected with waterways and ports inside the district to the fullest extent consistent with the Texas Constitution;

(3) acquire, purchase, own, construct, enlarge, extend, repair, maintain, operate, develop, and regulate land, waterways, improvements, facilities, or aids incident to or necessary in the proper operation and development of ports and waterways in the district, including wharves, docks, warehouses, commercial and industrial buildings, grain elevators, bunkering facilities, belt railroads, floating plants and facilities, lightering facilities, towing facilities, and all appurtenances;

(4) hire, rent, convey, lease, and otherwise make available to any person the improvements of the district;

(5) assess and collect charges for use of all facilities acquired or constructed in accordance with this chapter and apply the amounts collected for maintenance and operation of the business of the district, to make the district self-supporting and financially solvent, and to retire the construction cost of the improvements within a reasonable period;

(6) enter into valid and binding contracts to apply revenues, over and above the maintenance and operation costs, which are derived from sources other than taxation, to pay principal and interest on bonds;

(7) enter into contracts with the United States for loans and grants on terms and conditions necessary to comply with regulations and requirements of the United States under federal law; and

(8) issue bonds, notes, warrants, certificates of indebtedness, and other forms of obligation payable from revenues derived from improvements and pledge these revenues to the payment of the district's debts in the manner provided in Subchapter E of Chapter 60 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.154. AUTHORITY TO GO ON LAND. The commission and the district engineer, together with all necessary teams, help, tools, instruments, implements, and machinery, may go on any land inside the district to examine the land and make plans, surveys, maps, and profiles without subjecting themselves to action for trespass.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.155. ACQUISITION OF PROPERTY AND RIGHT-OF-WAY. The commission may acquire by gift, purchase, or condemnation proceedings the necessary right-of-way and property of any kind necessary for improvements contemplated by this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.156. EMINENT DOMAIN. (a) The district may exercise the power of eminent domain to condemn and acquire the right-of-way over and through any public or private land necessary to improve any river, bay, creek, or arm of the Gulf of Mexico for the construction and maintenance of any canal or waterway and for any other purpose authorized by this chapter.

(b) The condemnation proceedings shall be instituted under the direction of the commission and in the name of the district, and the damages shall be assessed in conformity with the laws for condemning and acquiring rights-of-way by railroads.

(c) No appeal from the finding and assessment of damages shall have the effect of suspending work by the commission in prosecuting the work of improvement in detail.

(d) No right-of-way can be condemned through any part of an incorporated city or town without the consent of the lawful authorities of the city or town.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.157. AUTHORITY OVER IMPROVEMENTS. A district may acquire, purchase, take over, construct, maintain, operate, develop, and regulate wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants, literage, lands, towing facilities, and all other facilities or aids incident to or necessary to the operation or development of ports or waterways inside the district extending to the Gulf of Mexico.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.158. OBTAINING CONSENT OF UNITED STATES. If a river, creek, bay, stream, canal, or waterway which is to be improved is navigable or if the improvements are of a type which require the permission or consent of the United States, the commission may obtain the permission or consent of the United States.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.159. COOPERATION WITH THE UNITED STATES. (a) The

commission may cooperate and act with the United States in surveys, work, and expenditure of money in any matters relating to construction and maintenance of the canals and the improvement and navigation of navigable rivers, bays, creeks, streams, canals, and waterways.

(b) To the extent that the United States aids in these matters, the commission may agree and consent to the United States entering and taking management and control of the work insofar as necessary or permissible under the laws and regulations of the United States.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.160. DUTIES OF ENGINEER. The engineer shall:

(1) make necessary surveys, examinations, investigations, maps, plans, and drawings relating to proposed improvements;

(2) estimate the cost of improvements;

(3) supervise the work of improvements; and

(4) perform any duties which might be required by the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.161. UNITED STATES PERFORMING DUTIES OF ENGINEER. Instead of or in addition to employing an engineer, the commission may adopt any survey of a river, creek, canal, stream, bay, or waterway previously made by the United States and may arrange for surveys, examinations, and investigations of proposed improvements and for supervision of the work of improvement by the United States.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.162. DISTRICT ORDER FOR IMPROVEMENTS. If the commission considers it in the best interest for the district to exercise the powers granted by Section 63.153 of this code or if the commission finds that additional improvements to those originally planned or constructed are necessary for navigation of or in aid of navigation of any river, creek, stream, bay, canal, or waterway, the commission shall make this finding in an order entered in the minutes

and shall direct the engineer to make an estimate showing the character and cost of the improvements.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.163. NOTICE OF HEARING. (a) After the commission's order is entered in the minutes, the commission shall publish notice once a week for three consecutive weeks in a newspaper published in the district. If no newspaper is published in the district, the notice shall be published in the newspaper published nearest to the district.

(b) The notice shall include a copy of the commission's order and shall designate a time and place for a hearing.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.164. HEARING ON IMPROVEMENTS. (a) The commission shall hear evidence at the hearing, and any district taxpayer or interested person may present evidence.

(b) The commission may adjourn the hearing from day to day for a reasonable time so that all taxpayers and interested persons may be heard.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.165. FINDINGS. (a) After the hearing is completed, the commission shall enter its order making findings as to whether or not the improvements and construction of the facilities is feasible and practicable and whether or not benefits will result to the public.

(b) If the findings are against the proposed improvements, no further action will be taken, but if the commission finds that the improvements are feasible and practicable and would be a public benefit, the district may issue bonds to pay for the necessary improvements and facilities.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.166. BOND ELECTION. (a) An election shall be held to approve the issuance of the bonds.

(b) The ballots shall be printed to provide for voting for or against the proposition: "The issuance of bonds and the levy of a tax to pay for the bonds."

(c) The returns of the election shall be canvassed as provided in this chapter.

(d) If the canvass indicates that a majority of the electors voted in favor of the proposition, the commission shall issue an order directing the issuance of the bonds and the levy of a tax.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.167. FORM OF BONDS. (a) The bonds shall be issued in the manner that other bonds are issued under this chapter, and the amount of the bonds may not be more than the cost of the improvements estimated by the engineer.

(b) The bonds shall be issued in the name of the district and shall be signed by the president of the commission and attested by the secretary with the seal of the district attached.

(c) The bonds shall be issued in the denominations and payable at the times, not more than 40 years, considered most expedient by the board. Interest shall be payable annually or semiannually.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.168. BIDS FOR CONTRACT. (a) Before the commission enters into a contract requiring the expenditure of more than $15,000, it shall submit the proposed contract for competitive bids.

(b) The commission may reject any and all bids, and if the contract is for a public improvement, the successful bidder shall be required to give the statutory bonds required by Chapter 2253, Government Code.

(c) The contract shall be awarded to the lowest and best bidder.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1977, 65th Leg., p. 805, ch. 299, Sec. 3, eff. Aug. 29, 1977; Acts 1993, 73rd Leg., ch. 757, Sec. 24, eff. Sept. 1,

1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(19), eff. Sept. 1, 1995.

Sec. 63.169. NOTICE OF BIDS. (a) Notice of the time and place the contract will be awarded shall be published in one or more newspapers with general circulation in the state, one of which shall be a newspaper published in the county in which the district is located if a newspaper is published in the county.

(b) The notice shall be published once a week for two consecutive weeks before the time set for awarding the contract, with the first publication being made at least 14 days before the day for awarding the contract.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.170. APPLICATION OF CERTAIN SECTIONS. The provisions of Sections 63.168-63.169 of this code do not apply to:

(1) improvements carried out and performed by the United States;

(2) calamities or emergencies which make it necessary to act at once to preserve the property of the district;

(3) unforeseen damage to district property, machinery, or equipment or necessary emergency repairs to them; or

(4) contracts for personal or professional services or work done by the district and paid for by the day as the work progresses.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.171. PROCEDURE FOR BIDS. (a) Any person desiring to bid on the construction of any work advertised shall, on application to the commission, be furnished at actual cost the survey, plans, and estimates for the work.

(b) Bids for the work shall be in writing, sealed, and delivered to the chairman of the commission, together with a certified check for at least five percent of the total amount of the bid. A bid bond in the amount of at least five percent of the total amount of the bid executed by a corporate surety duly authorized to do business in this state and payable to the district may be

substituted in lieu of the certified check.

(c) If the bidder's bid is accepted but he refuses to enter into a proper contract and give the performance and payment bond required by Chapter 2253, Government Code, the certified check or bid bond shall be forfeited to the district.

(d) The commission may reject any and all bids.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1971, 62nd Leg., p. 1448, ch. 404, Sec. 1, eff. May 26, 1971; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(19), eff. Sept. 1, 1995.

Sec. 63.172. FORMAL REQUIREMENTS OF CONTRACT. A contract entered into by the district shall be in writing and signed by the contractors and the commissioners, any two of the commissioners, the executive director of the district, or an authorized representative of the executive director.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1330 (S.B. 1531), Sec. 12, eff. June 15, 2007.

Sec. 63.173. CONTRACTOR'S BOND. The contractor shall execute an adequate bond payable to the commission in the amount of the contract price, conditioned that he will faithfully perform the obligations, agreements, and covenants of the contract and that if he defaults he will pay the district all damages sustained by reason of the default. The bond shall be approved by the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.174. INTEREST IN CONTRACT. The members of the board and the engineer may not be directly or indirectly interested for themselves or as agents in a contract for the construction of a work to be performed by the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.175. SUPERVISION OF WORK. (a) Unless done under the supervision of the United States, all work contracted for by the district shall be done under the supervision of a representative of the district.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 17, eff. May 22, 2019.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 14, eff. May 22, 2019.

Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 15, eff. May 22, 2019.

Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 17, eff. May 22, 2019.

Sec. 63.176. PAYMENT FOR WORK. (a) A representative of the district shall inspect the work being done during its progress, and on completion of the contract, the district shall draw a warrant on the district depository or issue a check in favor of the contractor or the contractor's assignee for the amount of the contract price. The warrant or check shall be paid from the construction and maintenance or operating fund.

(b) If the district considers it advisable, it may contract to pay for the work in partial payments as the work progresses. Partial payments may not be more in the aggregate than the amount allowed under applicable laws. The amount of the work shall be shown by a certificate of a representative of the district.

(c) The provisions of this section do not apply to improvements carried out or performed by the United States.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by Acts 1971, 62nd Leg., p. 1448, ch. 404, Sec. 2, eff. May 26, 1971.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 108 (S.B. 755), Sec. 16, eff. May 22, 2019.

Sec. 63.177. COMMISSION REPORT. (a) The commission shall make an annual report of its activities and file it with the county clerk on or before January 1 of each year.

(b) The report shall show in detail:

(1) the kind, character, and amount of work done in the district;

(2) the cost of the work; and

(3) the amount paid on order, the purpose for which paid, and other data necessary to show the condition of improvements made under the provisions of this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.178. FRANCHISES. (a) A district may grant franchises on property owned or controlled by the district to any person for purposes consistent with this chapter and may charge fees for the franchises.

(b) A franchise may be granted for a period of not more than 50 years.

(c) Before the franchise is granted, the commission must approve the franchise by a majority vote at three separate meetings held at least one week apart and must publish notice. The third meeting at which the commission votes to grant a franchise may not take place before the date the notice required by this subsection is published for the third time.

(c-1) For the purposes of Subsection (c), notice must be published at the expense of the applicant, once a week for three consecutive weeks in a newspaper published in the district. The notice must consist of:

(1) the text of the franchise in full; or

(2) a descriptive caption stating the purpose of the franchise and the location at which a complete copy of the franchise may be obtained.

(d) The franchise shall require the grantee to file a written acceptance within 30 days from the day the franchise is finally approved by the commission. Unless the district and the grantee agree on a later date, the effective date of the franchise is the date the grantee files the written acceptance with the commission.

(e) Fees charged for a franchise may be used to pay interest on

bonds or other securities issued by the district for construction of its improvements and to retire these bonds or other securities at maturity.

(f) This section shall not be construed to prevent a district from granting revocable licenses or permits for the use of limited portions of waterfront or facilities for purposes consistent with this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 21, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 19, eff. June 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1120 (S.B. 1129), Sec. 2, eff. September 1, 2017.

Sec. 63.179. ADJACENT LAND. (a) The district may own land adjacent or accessible to the navigable water developed by the district and may lease the land to any person and charge reasonable tolls, fees, or other charges.

(b) Proceeds from the tolls, fees, or other charges may be used for maintenance and operation of the business of the district, to make the district self-supporting and financially solvent, and to return the construction cost of the improvements within a reasonable period.

(c) The land may be located in whole or in part inside or outside the boundaries of any incorporated city, town, or village in this state, but land which is not included inside the boundaries of a city, town, or village at the time it is acquired by the district may not be annexed or included inside the boundaries of the city, town, or village without the written consent of the district evidenced by a resolution adopted by the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.180. ISSUANCE OF WRITS. A writ of mandamus shall issue from a court of competent jurisdiction to compel the commission to apply revenue in accordance with the terms of a contract with the

United States, and an injunction may be issued to restrain the commission from violating the provisions of a contract with the United States.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.181. PEACE OFFICERS. The district may appoint peace officers to protect life and property in the district and the property of the district. The officers shall have the same rights, powers, and authority as policemen of a city or town.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 72, ch. 32, Sec. 1, eff. April 15, 1981.

Sec. 63.182. EFFECT ON POLICE POWERS. The provisions of this chapter shall not affect or repeal the police powers of any municipality inside the district or any law, ordinance, or regulation which authorizes the municipality to exercise police power over any navigable stream, aid to navigation, or facility for navigation in the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.183. OTHER LAWS GOVERNING DISTRICT. The commission has the same rights, powers, and duties provided for commissioners in Chapter 62, Transportation Code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.279, eff. Sept. 1, 1997.

SUBCHAPTER E. GENERAL FISCAL PROVISIONS

Sec. 63.221. CONSTRUCTION AND MAINTENANCE FUND. (a) The construction and maintenance fund shall include money received from the sale of bonds and other sources except the tax and other collections deposited in the sinking fund and used to pay interest on

the bonds.

(b) All expenses incurred in connection with the creation, establishment, and maintenance of the district after the original petition to create the district is filed shall be paid from the construction and maintenance fund.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.222. DISTRICT DEPOSITORY. The district depository shall be designated as provided by Section 60.271, and the district's funds shall be deposited in the depository.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1997, 75th Leg., ch. 1400, Sec. 4, eff. Sept. 1, 1997.

Sec. 63.224. ACCOUNTS AND RECORDS; AUDIT. (a) A complete book of all accounts and records shall be kept by the district.

(b) In January of each year or as soon after that time as practicable, the county auditor or, in the discretion of the commission, an independent certified public accountant or firm of independent certified public accountants shall be employed to make a complete audit of the books and records and make a report of the findings.

(c) The audit report shall be made in triplicate, and one copy shall be filed with the district office, one with the district depository, and one with the county auditor's office.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.225. DEPOSIT. (a) When the petition to create the district is filed, it shall be accompanied by a $500 deposit, which shall be held by the county clerk until the result of the election to create the district is declared and entered in the minutes of the commissioners court.

(b) If the result of the election favors the creation of the district, the county clerk shall return the $500 deposit to the signers of the petition or their agent or attorney.

(c) If the result of the election is against the creation of the district, the county clerk shall pay the costs and expenses of the proposed district up to and including the election from the $500 deposit on vouchers signed by the county judge and shall return the balance of the deposit, if any, to the signers of the petition or their agent or attorney.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.226. DEBT. (a) The district may retire the original cost of construction of its improvements or pay for the cost of construction by borrowing money and pledging and mortgaging land, wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants, lighterage, towing facilities, and other facilities or aids incident or necessary to the operation or development of ports or waterways.

(b) The district may issue its debentures or other evidences of debt secured by a mortgage for the length of time and a rate of interest of not more than eight percent a year. In addition, the district may secure the debentures, notes or other evidences of debt with bonds of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.227. RETIRING DEBT. Debentures, notes, or other evidences of debt may be retired by rents, tolls, fees, or charges other than taxes. The debt also may be retired by assessments against taxable property in the district which is equitably distributed on the basis of benefits derived by the property from district improvements.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.228. BORROWING MONEY. (a) A district may borrow for any legal purpose from the United States or from any banking institution or other source not more than $250,000 to meet temporary needs, and may issue notes or other short term obligations other than bonds which will mature in not more than 10 years from their date and

may pledge any securities owned by them or their surplus revenues.

(b) A district, in the acquisition of land necessary for the development of its ports and waterways both industrial and otherwise, may execute purchase money notes securing same with liens on the land being acquired or with a pledge of surplus revenue, or with both. The notes may bear interest at the rate determined by the commission.

Added by Acts 1971, 62nd Leg., p. 1448, ch. 404, Sec. 3, eff. May 26, 1971.

SUBCHAPTER F. BOND PROVISIONS

Sec. 63.251. LEVY OF TAX. After bonds have been voted, the commission shall levy a tax on all taxable property in the district sufficient to pay principal of and interest on the bonds and shall annually levy and have assessed and collected on the taxable property of the district an amount sufficient to pay for the expense of assessing and collecting the taxes.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.252. FORM OF BONDS. (a) Bonds issued under the provisions of this chapter shall be issued in the name of the district and shall be signed by the chairman of the commission and attested by the secretary, with the district's seal affixed to each bond.

(b) The bonds shall be issued in the denominations and payable annually or semiannually at the time or times, not more than 40 years from their date, that the commission considers most expedient.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.253. APPROVAL OF BONDS BY ATTORNEY GENERAL. (a) Before bonds are offered for sale, the district shall present to the attorney general a certified copy of all the minutes of commission proceedings relating to the issuance of the bonds, including:

(1) a copy of the notices of hearing and election, together with a certified return of each notice;

(2) a certified copy of the commission's order levying a

tax to pay principal of and interest on the bonds;

(3) a statement of the total bonded indebtedness of the district, including the series of bonds and the assessed value of property for the purpose of taxation as shown by the last official assessment of the district; and

(4) any other information which the attorney general requires.

(b) The attorney general shall carefully examine the bonds in connection with the constitution, laws relating to the execution of the bonds, and the facts.

(c) If the attorney general finds that the bonds were issued in conformity with the constitution and laws and that they are valid and binding obligations of the district, he shall certify the bonds.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.254. REGISTRATION OF BONDS. After the bonds are examined and certified by the attorney general, they shall be registered by the comptroller in a book kept for that purpose, and the certificate of the attorney general shall be preserved in the record to be used in the event of litigation.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.255. VALIDITY OF BONDS. (a) After the bonds are certified by the attorney general and registered by the comptroller, they shall be held prima facie valid and binding obligations in every action, suit, or proceeding in which their validity is brought into question.

(b) In any action brought to enforce collection of the bonds or interest on the bonds, the certificate of the attorney general or a certified copy of the certificate shall be received as prima facie evidence of the validity of the bonds and their coupons, and the only defense that can be offered against the validity of the bonds or coupons is forgery or fraud.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.256. SALE OF BONDS. (a) After the bonds are registered, the chairman of the commission shall offer them for sale and shall sell the bonds on the best terms and for the best price possible.

(b) As the bonds are sold, the money received for them shall be paid to the district depository to the credit of the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.257. BOND RECORD. (a) After bonds are issued, the board shall procure and deliver to the secretary of the district a well-bound book for recording the bonds.

(b) The record kept in the book shall include:

(1) the bonds and their numbers;

(2) the amount of the bonds;

(3) the interest rate;

(4) the date of issuance;

(5) the date the bonds become due;

(6) the place where the bonds are payable;

(7) the amount received for each bond; and

(8) the tax levy to pay interest and provide a sinking fund.

(c) The bond record shall be available for public inspection by all interested parties in the district.

(d) On payment of a bond, an entry of the payment shall be made in the bond record.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER G. TAX PROVISIONS

Sec. 63.281. BOND TAX. (a) After bonds have been voted, the commission shall levy and have assessed and collected improvement taxes on all taxable property inside the district.

(b) The tax shall be in an amount which is sufficient to pay the principal of and interest on the bonds.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.282. MAINTENANCE AND OPERATION TAX. (a) With the approval of the electors of the district, the commission may levy and have assessed and collected for the maintenance, operation, and upkeep of the district and its improvements an annual tax of not more than 20 cents on the $100 valuation on all taxable property in the district.

(b) The proposition to approve the tax provided in Subsection (a) of this section may be voted on at the election to create the district or may be voted on at a separate election to be held in the manner provided for elections held under Subchapter B of this chapter.

(c) The ballots for the election shall be printed to provide for voting for or against the proposition: "The levy of a tax of not more than 20 cents on the $100 valuation for maintenance, operation, and upkeep of the district and its improvements."

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1971, 62nd Leg., p. 1770, ch. 518, Sec. 14, eff. May 31, 1971.

Sec. 63.283. FUNDS FROM SOURCES OTHER THAN TAXES. The district may pay interest on and principal of the bonds and pay the costs of maintenance, operation, and upkeep with revenue from tolls, rents, fees, or charges other than taxation or with assessments made on the property in the district on the basis of benefit derived.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.285. DUTY OF ASSESSOR AND COLLECTOR. The assessor and collector shall assess and collect taxes for the district.

Acts 1971, 62nd Leg., ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

SUBCHAPTER H. ASSESSMENTS

Sec. 63.321. ASSESSMENTS TO RETIRE DEBT. Assessments which are equitably distributed against property in the district may be used to pay the cost of making improvements and to pay principal of and

interest on bonds, notes, debentures, or other evidences of debt issued by the district for improvements.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.322. ORDER TO RETIRE DEBT BY ASSESSMENTS. If the commission decides to retire bonds and other evidences of debt by equitably distributed assessments against the property in the district, it shall enter an order with its findings in the minutes of its proceedings.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.323. NOTICE OF THE ORDER AND HEARING. (a) The commission shall publish notice once a week for three consecutive weeks in a newspaper in the district or, if no newspaper is published in the district, in the newspaper published nearest to the district.

(b) The notice shall include a copy of the order and shall set a date for a hearing at which all property owners and persons interested in the district and the improvements may appear and contest the assessments and offer evidence for or against the assessments before the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.324. HEARING PROCEDURE. (a) All protests, contests, and objections at the hearing shall be presented in writing.

(b) The commission shall summon witnesses when requested to do so and take testimony with reference to the protests, contests, and objections.

(c) The hearing may be adjourned from day to day until all proponents or contestants of the assessments have had full opportunity to present evidence.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.325. FINDINGS. The commission shall enter its findings

after the hearing, and if it finds against the proposition of assessments, no further action shall be taken in the matter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.326. TAX ROLL. (a) If the commission finds in favor of levying assessments, it shall direct the assessor and collector of the district to prepare a roll of all the taxable property in the district in the same manner as assessment for ad valorem taxes.

(b) The assessor and collector shall make an assessment in the proportion of cost to be borne by each item of property on the tax rolls, basing the proportion of cost on benefits to be derived from the improvements by the property and the owner of the property.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.327. BOARD OF EQUALIZATION. (a) If the commission finds in favor of levying assessments, it shall appoint three persons who are electors of the district to be commissioners on the board of equalization and shall designate the time for the meeting of the board of equalization.

(b) The board of equalization shall meet at the time fixed by the commission to receive the assessment lists or books of the district for examination, correction, equalization, and approval.

(c) The secretary of the commission shall act as secretary for the board of equalization and shall keep a permanent record of the proceedings of the board of equalization.

(d) Before beginning to perform the duties of the board of equalization, each member shall take the following oath: "I _____ do solemnly swear (or affirm) that I will, to the best of my ability, make a full and complete examination, correction, and equalization of all property contained in the district as shown by the assessment lists or books of the assessor and collector and add all property not included of which I have knowledge."

(e) The oath shall be entered in the minutes by the secretary.

(f) The completed tax roll shall be submitted to the board of equalization.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 63.328. NOTICE OF HEARING BY BOARD OF EQUALIZATION. Notice of the hearing by the board of equalization shall be published once a week for three consecutive weeks in a newspaper published in the district or, if no newspaper is published in the district, in the newspaper published nearest to the district.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.329. HEARING BY BOARD OF EQUALIZATION. The owners of property shall have an opportunity to present evidence in hearings before the board of equalization. All interested persons shall have an opportunity to appear and present evidence as to the benefits or lack of benefits to property in which they are interested.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 63.330. FINDINGS OF BOARD OF EQUALIZATION. After all hearings are completed, the board of equalization shall report its findings to the commission for acceptance or disapproval.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.331. DISAPPROVAL OF FINDINGS. If the commission refuses to approve the tax rolls, it shall hold hearings on all items not approved in the manner provided for the board of equalization.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.332. EFFECT OF APPROVAL OF FINDINGS. The approval of the findings of the board of equalization and the tax rolls as finally fixed shall be conclusive except in cases of fraud or the

failure to equitably distribute the assessments.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.333. PERSONAL OBLIGATION; LIEN. An assessment is a personal obligation of the property owner against whom the assessment is made, and the district has a lien against the assessed taxable property.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.334. ASSESSMENT FUND. (a) The assessments shall be paid to the assessor and collector and shall be kept by him in a separate fund known as the "Assessment Fund."

(b) Payments out of the fund shall be made to retire the bonds, notes, debentures, or other evidences of debt of the district on vouchers drawn by the commission each year on the maturity of the indebtedness.

(c) The vouchers shall be signed by at least two members of the commission.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.335. ERRORS IN ASSESSMENTS. (a) An error, mistake, or formality in the assessment or in any step or proceeding prerequisite to the assessment shall not invalidate the assessment, but the commission may correct the error at all times.

(b) An error or mistake in describing any parcel or item of property or the name of any owner of property shall not invalidate the assessment, but it shall have full force and effect against the premises and the real and true owner.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.336. REASSESSMENT. (a) If, in the opinion of the commission, an error, mistake, or invalidity exists in any proceeding with reference to the improvements or assessments, it shall correct

the error, mistake, or invalidity and reassess the property and the owners of the property.

(b) The reassessment shall be made after the same notice and hearing as provided for the making of an original assessment. The commission in making the reassessment shall take into consideration any enhancement or depreciation in the value of the property assessed and shall make the reassessment on a basis of equalization and the equitable distribution of benefits to the property with respect to all other property in the district.

(c) A reassessment shall not be made later than three years from the date of the original assessment except in the case of fraud or undisclosed ownership of property.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.337. SUIT TO SET ASIDE OR CORRECT ASSESSMENT. (a) A property owner with an assessment or reassessment against him or his property may bring suit within 20 days after the assessment or reassessment in any court with jurisdiction to set aside or correct the assessment or reassessment or any proceeding with reference to the assessment or reassessment due to any error or invalidity.

(b) The cost of a suit to set aside or correct an assessment or reassessment shall be paid by the loser of the litigation.

(c) After the 20-day period following the assessment or reassessment, the owner or his heirs, assigns, or successors do not have a right of action or a defense of invalidity of the assessment or reassessment in any action in which the assessment or reassessment is in question, except in case of fraud.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.338. DELINQUENT ASSESSMENTS. (a) Not later than August 1 of each year, the assessor and collector shall prepare a delinquent roll showing all delinquencies in the payment of the assessments.

(b) The assessor and collector shall post the delinquent roll in the district office for at least 20 days.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.339. SUIT FOR COLLECTION. (a) After the delinquent roll has been posted in the district office for 20 days, the attorney for the district may file suit for collection in any court with jurisdiction.

(b) An attorney's or collection fee of 10 percent on the amount of principal and interest due at the time of filing the suit shall accrue against the property owner and shall be charged as costs of court. The attorney's or collection fee is collectible against the property owner and the property from the date of the filing of the suit.

(c) Except as otherwise provided in this section, the suit shall be filed and prosecuted in the same manner as suits for the collection of delinquent ad valorem taxes.

(d) It is not necessary in the suit to specifically plead and prove the orders, notices, rules, and regulations of the commission relating to the assessment or reassessment. It is sufficient for the petition or other pleading to allege that the proceedings with reference to the making of the improvements and the assessments or reassessments were held in compliance with the law and that all prerequisites to the fixing of the assessment lien on the assessed property and the personal liability of the owner were performed.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, Sec. 4(r), eff. Jan. 1, 1982.

Sec. 63.340. SALE OF PROPERTY TO SATISFY JUDGMENT. The district may purchase any property at a sale to satisfy a judgment in favor of the district on a delinquent assessment or reassessment, if the district is the best bidder.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 63.341. RULES AND REGULATIONS. The commission may adopt any necessary rules, regulations, and orders, which are not inconsistent with the provisions of this chapter, for the purpose of carrying out the provisions of the chapter relating to assessments,

reassessments, and the collection of assessments.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

SUBCHAPTER I. ANNEXATION

Sec. 63.371. ANNEXATION AUTHORITY. A district created under this chapter or converted from a district created under Article III, Section 52 of the Texas Constitution, into a conservation and reclamation district under Article XVI, Section 59 of the Texas Constitution, may extend its boundaries and annex adjacent territory.

Added by Acts 1977, 65th Leg., p. 1978, ch. 791, Sec. 4, eff. Aug. 29, 1977.

Sec. 63.372. PETITION. Before territory is annexed to the district, a petition signed by 50 or a majority of the electors residing in the adjacent territory proposed to be annexed shall be presented to the commission requesting an election in the adjacent territory to determine whether or not the territory will be annexed and whether or not it will assume its pro rata part of the outstanding bonded debt of the district.

Added by Acts 1977, 65th Leg., p. 1978, ch. 791, Sec. 4, eff. Aug. 29, 1977.

Sec. 63.373. SCHEDULING PETITION FOR HEARING; NOTICE. (a) After a petition is presented under Section 63.372 of this code, the commission shall set the petition for a hearing to be held within 10 days from the date of presentation of the petition.

(b) Notice of the hearing shall be posted at three public places in the territory proposed to be annexed for at least five days before the hearing on the petition. The notice shall include the time and place of the hearing and the boundaries of the territory proposed to be annexed.

Added by Acts 1977, 65th Leg., p. 1978, ch. 791, Sec. 4, eff. Aug. 29, 1977.

Sec. 63.374. HEARING. The commission shall hold the hearing on the subject of annexation of adjacent territory by the district, and any person who has taxable property in the territory proposed to be annexed may appear in person or by counsel and offer testimony or argument for or against the inclusion of all or any part of the land proposed to be annexed.

Added by Acts 1977, 65th Leg., p. 1978, ch. 791, Sec. 4, eff. Aug. 29, 1977.

Sec. 63.375. ELECTION ORDER. If after the hearing the commission finds that inclusion of the territory proposed to be annexed would be a direct benefit to all the land in that territory, the commission shall order an election to be held in the territory proposed to be annexed.

Added by Acts 1977, 65th Leg., p. 1978, ch. 791, Sec. 4, eff. Aug. 29, 1977.

Sec. 63.376. NOTICE OF ELECTION. (a) The election shall be held not less than 20 nor more than 30 days from the day of the election order and after notice is given.

(b) Notice of the election shall be published once a week for 20 days immediately preceding the election in some newspaper published in the territory proposed to be annexed. If no newspaper is published in the territory, notice shall be posted in three public places inside the territory for at least 20 days immediately preceding the election.

(c) The notice:

(1) shall give the time and place or places for holding the election;

(2) shall give the boundaries of the territory proposed to be annexed; and

(3) may contain the substance of the order of the commission ordering the election.

(d) The secretary of the commission shall have the notice published or posted.

Added by Acts 1977, 65th Leg., p. 1978, ch. 791, Sec. 4, eff. Aug.

29, 1977.

Sec. 63.377. BALLOTS. The ballots for the election shall be printed to allow for voting for or against: "Annexation to the navigation district" and "Assumption of a pro rata part of the bonded debt of the navigation district."

Added by Acts 1977, 65th Leg., p. 1978, ch. 791, Sec. 4, eff. Aug. 29, 1977.

Sec. 63.378. ELECTION OFFICIALS. The commission shall appoint one judge and two clerks for each election box or place to hold the election. The judge and clerks shall be electors in the territory proposed to be annexed and shall reside near the place for holding the election.

Added by Acts 1977, 65th Leg., p. 1978, ch. 791, Sec. 4, eff. Aug. 29, 1977.

Sec. 63.379. CANVASS OF VOTE; ENTRY OF ORDER. (a) The election judges shall certify the election returns to the commission, and the commission shall canvass the returns.

(b) If a majority of the electors voting at the election favor annexation and assumption of the pro rata part of the bonded debt of the district, the commission shall enter an order in its minutes annexing the territory, and from and after the entry of the order, the annexed territory shall be a part of the district with all the rights, benefits, and burdens of property originally situated in the district.

(c) If a majority of the electors voting at the election favor annexation and the proposition to assume the bonded debt fails to carry, the commission shall enter an order in its minutes annexing the territory to the district, and from and after the entry of the order, the annexed territory shall be a part of the district with the exception of the assumption of the outstanding bonded indebtedness. The annexed territory shall be subject to a tax for maintenance and operation and shall be liable for all other bonded indebtedness and other indebtedness thereafter legally imposed by the district.

(d) After an order of annexation has been entered in the minutes of the commission, a certified copy of the order shall be prepared by the secretary of the commission and shall include the boundaries of the territory annexed. The secretary shall record the order or have it recorded in the real estate records of the county or counties in which the territory is located.

Added by Acts 1977, 65th Leg., p. 1978, ch. 791, Sec. 4, eff. Aug. 29, 1977.

CHAPTER 65. SPECIAL UTILITY DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 65.001. DEFINITIONS. In this chapter:

(1) "District" means a special utility district operating under this chapter.

(2) "Board" means the board of directors of a district.

(3) "Director" means a member of the board of directors of a district.

(4) "Commission" means the Texas Natural Resource Conservation Commission.

(5) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(6) "Public agency" means any city, the United States and its agencies, the State of Texas and its agencies, and any district or authority created under Article XVI, Section 59, or Article III, Sections 52(b)(1) and (2), of the Texas Constitution.

(7) "City" means any incorporated city or town.

(8) "Extraterritorial jurisdiction" means the extraterritorial jurisdiction of a city as determined under Chapter 42, Local Government Code.

(9) "Sole expense" means the actual cost of relocating, raising, lowering, rerouting, changing grade, or altering the construction to provide comparable replacement without enhancing the facility, after deducting the net salvage value derived from the old facility.

(10) "Water supply or sewer service corporation" means any member-owned, member-controlled, nonprofit water supply or sewer service corporation created and operating under Chapter 67, that:

(A) provides water supply services to noncontiguous

subdivisions in two or more counties, at least one of which counties has a population greater than 3.3 million; or

(B) is providing the services of a water supply or sewer service corporation under a certificate of convenience and necessity issued by the commission or a predecessor agency.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985; Acts 1985, 69th Leg., ch. 795, Sec. 1.153, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 149, Sec. 47, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.082, eff. Aug. 12, 1991; Acts 1997, 75th Leg., ch. 474, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.67, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 320, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 669, Sec. 150, eff. Sept. 1, 2001.

SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION OF DISTRICT

Sec. 65.011. CREATION OF DISTRICT. A special utility district may be created under and subject to the authority, conditions, and restrictions of, and is considered a conservation and reclamation district under Article XVI, Section 59, of the Texas Constitution.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.012. PURPOSES OF DISTRICT. A district may be created:

(1) to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the transportation of water; and to sell water to towns, cities, and other political subdivisions of this state, to private business entities, and to individuals;

(2) for the establishment, operation, and maintenance of fire-fighting facilities to perform all fire-fighting activities within the district; or

(3) for the protection, preservation, and restoration of the purity and sanitary condition of water within the district.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug.

29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985; Acts 2003, 78th Leg., ch. 494, Sec. 1, eff. June 20, 2003.

Sec. 65.013. COMPOSITION OF DISTRICT. (a) A district may include the area in all or part of any one or more counties including all or part of any cities and other public agencies.

(b) The land composing a district is not required to be contiguous, but may consist of separate bodies of land separated by land that is not included in the district.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.014. CERTIFIED RESOLUTION SEEKING CREATION OF DISTRICT. (a) If creation of a district is proposed by a water supply or sewer service corporation, a certified copy of a resolution requesting creation must be filed with the commission.

(b) The resolution shall be signed by the president and secretary of the board of directors of a water supply or sewer service corporation and shall state that the water supply or sewer service corporation, acting through its board of directors, has found that it is necessary and desirable for the water supply or sewer service corporation to be converted into a district.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985; Acts 1999, 76th Leg., ch. 320, Sec. 2, eff. Aug. 30, 1999.

Sec. 65.015. CONTENTS OF RESOLUTION. In addition to the requirements stated in Section 65.014, the resolution shall:

(1) describe the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, or by any other commonly recognized means in a certificate attached to the resolution executed by a registered professional engineer;

(2) state the general nature of the services presently performed by the water supply or sewer service corporation, the general nature of the services proposed to be provided by the district, and the necessity for the services provided by the district;

(3) include a name of the district that is generally descriptive of the location of the district followed by the words special utility district, but may not be the same name as any other district in the same county;

(4) include the names of not less than five and not more than 11 qualified persons to serve as the initial board of directors of the district; and

(5) specify each purpose for which the district is being established.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985; Acts 1999, 76th Leg., ch. 320, Sec. 2, eff. Aug. 30, 1999; Acts 2003, 78th Leg., ch. 494, Sec. 2, eff. June 20, 2003.

Sec. 65.016. CONSENT OF CITY. A district may operate within the corporate limits of a city or within the extraterritorial jurisdiction of a city, provided that a city may require that the district construct all facilities to serve the land in accordance with plans and specifications that are approved by the city. The city may also require that the city be entitled to inspect facilities being constructed by a district within the corporate limits or extraterritorial jurisdiction of the city.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.018. NOTICE AND HEARING ON DISTRICT CREATION. If a resolution is filed under Section 65.014, the commission shall give notice of an application as required by Section 49.011 and may conduct a hearing on the application if the commission determines that a hearing is necessary under Section 49.011.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985; Acts 1997, 75th Leg., ch. 1070, Sec. 40, eff. Sept. 1, 1997.

Sec. 65.020. HEARING. (a) If the commission determines that a hearing is necessary under Section 49.011, the commission shall conduct a hearing and accept evidence on the sufficiency of the resolution and whether or not the request for conversion for each purpose specified in the resolution, as required by Section 65.015, is feasible and practicable and is necessary and would be a benefit to all or any part of the land proposed to be included in the district. The commission may only consider a purpose for which the district is being created that is specified in the resolution.

(b) The commission has jurisdiction to determine all issues on the sufficiency of the resolution and the creation of the district.

(c) The hearing may be adjourned from day to day, and the commission may make all incidental orders necessary with respect to the matters before it.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985; Acts 1997, 75th Leg., ch. 1070, Sec. 41, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 1244 (H.B. 1673), Sec. 1, eff. September 1, 2005.

Sec. 65.021. GRANTING OR REFUSING CREATION OF DISTRICT. (a) If the commission finds that the resolution conforms to the requirements of Section 65.015, the request for conversion is feasible and practicable, and each purpose for which the district is created is necessary and would be a benefit to the land proposed to be included in the district, the commission shall make these findings in an order and shall authorize the creation of the district for the purpose or purposes specified in the resolution, as required by Section 65.015, on approval at the confirmation and directors' election called and held under this subchapter.

(b) In determining if the request for conversion is feasible and practicable and if each purpose for which the district is created is necessary and would be a benefit to the land included in the district, the commission shall consider:

(1) the availability of comparable service from other systems, including water districts, municipalities, and regional authorities;

(2) the reasonableness of projected construction costs, if any, tax rates, and water and sewer rates; and

(3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:

(A) land elevation;

(B) subsidence;

(C) groundwater level within the region;

(D) recharge capability of a groundwater source;

(E) natural runoff rates and drainage; and

(F) water quality.

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

(d) If the commission finds that the resolution does not conform to the requirements of Section 65.015 of this code, the request for conversion is not feasible or practicable, or a purpose for which the district is created is not necessary or a benefit to the land in the district, the commission shall make this finding in its order and shall deny the creation of the district.

(e) A copy of the order of the commission granting or denying the request for conversion stated in the resolution must be mailed to each city that has extraterritorial jurisdiction in a county in which the proposed district is located and that requested notice of hearing as provided by Section 65.019 of this code.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985; Acts 1997, 75th Leg., ch. 1070, Sec. 42, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 1244 (H.B. 1673), Sec. 2, eff. September 1, 2005.

Sec. 65.022. TEMPORARY DIRECTORS. If the commission authorizes the creation of the district, it shall appoint those persons whose names are listed in the resolution filed with the commission by the water supply or sewer service corporation to serve as temporary directors until initial directors are elected as provided by this subchapter.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985; Acts 1999, 76th Leg., ch. 320, Sec. 2, eff. Aug. 30, 1999.

Sec. 65.023. APPEAL FROM ORDER OF COMMISSION. A city or a person who appeared in person or by attorney and offered testimony for or against the creation of the district, may appeal from the order of the commission authorizing or refusing the creation of the district. The appeal must be made within 30 days after the entry of the order.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 65.101. BOARD OF DIRECTORS. A district is governed by a board of not less than five and not more than 11 directors.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.102. QUALIFICATIONS FOR DIRECTORS. To be qualified to serve as a director, a person must be:

(1) at least 18 years old;

(2) a resident citizen of this state; and

(3) either own land subject to taxation in the district, be a user of the facilities of the district, or be a qualified voter of the district.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.103. ELECTION OF DIRECTORS; TERMS OF OFFICE. (a) The persons receiving the highest number of votes at each election shall serve as directors of the district.

(b) The terms of the directors may run concurrently, or may be staggered, but in any event, the term of office of a director may not exceed three years.

(c) The method for determining the initial terms for each of the directors constituting the initial board shall be determined by the temporary directors, and the terms must be clearly stated on the ballot for the confirmation and directors' election.

(d) Notwithstanding Sections 41.001 and 41.003, Election Code, the board may hold an election to elect directors on any date determined by the board. The terms of directors must be stated on the ballot.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985; Acts 1995, 74th Leg., ch. 715, Sec. 35, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1070, Sec. 43, eff. Sept. 1, 1997.

SUBCHAPTER D. GENERAL POWERS AND DUTIES

Sec. 65.201. POWERS. (a) A district has the functions, powers, authority, and rights that will permit accomplishment of the purposes for which it is created.

(b) A district may purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes for which it was created, including works, improvements, facilities, plants,

equipment, and appliances incident, helpful, or necessary to:

(1) supply water for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls;

(2) collect, transport, process, dispose of, store, and control domestic, industrial, or communal wastes whether in fluid, solid, or composite state;

(3) gather, conduct, divert, and control local storm water or other local harmful excesses of water in the district;

(4) irrigate the land in a district;

(5) alter land elevation in a district where it is needed; and

(6) provide fire-fighting services for the inhabitants of the district.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.203. SOLID WASTE. A district may collect solid waste and may purchase, construct, acquire, own, operate, maintain, repair, improve, and extend a solid waste collection and disposal system inside and outside the district and may make proper charges for its facilities or services provided by the system.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.205. ADOPTING RULES. A district may adopt and enforce reasonable rules to:

(1) secure and maintain safe, sanitary, and adequate plumbing installations, connections, and appurtenances as subsidiary parts of its sanitary sewer system;

(2) preserve the purity and the sanitary condition of all water controlled by the district;

(3) prevent waste or the unauthorized use of water controlled by the district;

(4) regulate privileges on any land or easement owned or controlled by the district;

(5) provide and regulate a safe and adequate freshwater distribution system; and

(6) ensure adequate safeguards in the performance of the district's fire-fighting activities.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.206. EFFECT OF RULES. After the required publication, rules adopted by the district under Section 65.205 of this code shall be recognized by the courts as if they were penal ordinances of a city.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.207. PUBLICATION OF RULES. (a) The board shall publish a substantive statement of each rule and the penalty for its violation once a week for two consecutive weeks in one or more newspapers with general circulation in the area in which the district is located.

(b) The substantive statement shall be condensed as far as possible to intelligently explain the purpose to be accomplished or the act forbidden by each rule.

(c) The notice must advise that breach of a rule will subject the violator to a penalty and that the full text of each rule is on file in the principal office of the district at which it may be read by any interested person.

(d) Any number of rules may be included in one notice.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.208. EFFECTIVE DATE OF RULES. The penalty for violation of a rule is not effective and enforceable until five days

after the last publication of the notice. Five days after the last publication, the published rule takes effect and ignorance of the rule is not a defense to a prosecution for the enforcement of the penalty.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.235. PROHIBITION ON ASSESSMENT OR COLLECTION OF TAXES. Section 49.107 does not apply to a district created under this chapter.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 36, eff. Sept. 1, 1995.

SUBCHAPTER G. ISSUANCE OF BONDS AND NOTES

Sec. 65.501. ISSUANCE OF BONDS AND NOTES. The district may issue its bonds or notes for the purpose of purchasing, constructing, acquiring, owning, operating, repairing, improving, or extending any district works, improvements, facilities, plants, equipment, and appliances needed to accomplish the purposes listed in Section 65.012 of this code, including works, improvements, facilities, plants, equipment, and appliances needed to provide a waterworks system, sanitary sewer system, storm sewer system, solid waste disposal system, or to provide for solid waste collection or fire-fighting services and facilities.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.502. FORM OF BONDS AND NOTES. (a) A district may issue its bonds or notes in various series or issues.

(b) Bonds or notes shall mature serially or otherwise not more than 40 years from their date and shall bear interest at any rate permitted by the constitution and laws of this state. The board shall determine the maturity and the interest rate of the bonds and notes.

(c) A district's bonds, notes, and interest coupons, if any, are investment securities under Chapter 8, Business & Commerce Code, and may be issued registrable as to principal or as to both principal and interest. The board may make the bonds redeemable before maturity, at the option of the district, or may include in the bonds a mandatory redemption provision.

(d) A district's bonds or notes may be issued in the form, denominations, and manner and under the terms, conditions, and details, and must be signed and executed, as provided by the board in the resolution or order authorizing the issuance of the bonds or notes.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.503. MANNER OF REPAYMENT OF BONDS OR NOTES. The board may provide for the payment of principal of and interest and redemption price, if any, on the bonds or notes by pledging all or any part of the designated revenues to result from the ownership or operation of the district's works, improvements, facilities, plants, equipment, and appliances or under specific contracts for the period of time the board determines.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.504. ADDITIONAL SECURITY FOR BONDS OR NOTES. (a) The bonds or notes, within the discretion of the board, may be additionally secured by a deed of trust or mortgage lien on all or part of the physical properties of the district, and franchises, easements, water rights, and appropriation permits, leases, and contracts and all rights appurtenant to those properties, vesting in the trustee power to sell the property for payment of the indebtedness, power to operate the property, and all other authority necessary for the further security of the bonds or notes.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on any property, may:

(1) include provisions prescribed by the board for the security of the bonds or notes and the preservation of the trust estate;

(2) make provision for amendment or modification;

(3) condition the right to spend district money or sell district property on approval of a registered professional engineer selected as provided in the trust indenture; and

(4) make provision for investment of funds of the district.

(c) Any purchaser under a sale under the deed of trust or mortgage lien, if one is given, is absolute owner of the property, facilities, and rights purchased and is entitled to maintain and operate them.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.505. METHOD FOR ISSUANCE OF BONDS AND NOTES. Bonds or notes may be issued by resolution or order of the board.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.506. PROVISIONS OF BONDS OR NOTES. (a) In an order or resolution authorizing the issuance of bonds or notes, including refunding bonds, the board may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds, and may enter into additional covenants relating to the bonds or notes and the pledged revenues and to the operation and maintenance of those works, improvements, facilities, plants, equipment, and appliances the revenues of which are pledged, including provision for the operation or for the leasing of all or any part of the improvements and the use or pledge of money derived from the operation contracts and leases, as the board considers appropriate.

(b) An order or resolution of the board authorizing the issuance of bonds or notes also may prohibit the further issuance of bonds, notes, or other obligations payable from the pledged revenue

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, subject to the conditions that may be set forth in the order or resolution.

(c) An order or resolution of the board issuing bonds or notes may include other provisions and covenants determined by the board that are not prohibited by the constitution or by this chapter.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds or notes.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.507. USE OF BOND OR NOTE PROCEEDS. The district may use bond or note proceeds to pay interest, administrative, and operating expenses expected to accrue during the period of construction. The period of construction under this section may not exceed three years as provided by the bond order or resolution. The district also may use bond or note proceeds to pay expenses incurred and to be incurred in the issuance, sale, and delivery of the bonds or notes.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.508. SALE OR EXCHANGE OF BONDS. (a) The board shall sell the bonds on the best terms and for the best possible price, but the bonds may not be sold for less than 95 percent of their face value.

(b) The district may exchange bonds for property acquired by purchase or in payment of the contract price of work done or services performed for the use and benefit of the district.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff.

Nov. 15, 1985.

Sec. 65.510. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds, notes, or other obligations, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 40 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of this state.

(c) Refunding bonds may be payable from the same source as the bonds, notes, or other obligations being refunded or from other additional sources.

(d) The refunding bonds shall be approved by the attorney general and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded as provided by Section 65.509 of this code.

(e) An order or resolution authorizing the issuance of refunding bonds may provide that the refunding bonds will be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, and the refunding bonds may be issued before the cancellation of the bonds being refunded provided an amount sufficient to pay the principal of and interest on the bonds being refunded to their maturity dates, or to their option dates if the bonds have been duly called for payment prior to maturity according to their terms, is deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in this section, a district may refund bonds, notes, or other obligations as provided by the general laws of this state.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.511. OBLIGATIONS; LEGAL INVESTMENT; SECURITY FOR FUNDS. (a) Bonds, notes, and other obligations issued by a district are legal and authorized investments for all banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, and trustees, guardians, and for interest and sinking funds and other public funds of the state and its agencies, including the permanent school fund, and counties, cities, school districts, and other political subdivisions of the state.

(b) A district's bonds, notes, and other obligations are eligible to secure deposits of public funds of the state and its agencies and counties, cities, school districts, and other political subdivisions of the state. The bonds, notes, and other obligations are lawful and sufficient security to the extent of their market value if accompanied by all unmatured interest coupons attached to them.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.513. MANDAMUS BY BONDHOLDERS. In addition to other rights and remedies provided by the law of this state, if a district defaults in the payment of principal of, interest on, or redemption price on its bonds when due, or if the district fails to make payments into any fund created in the order or resolution authorizing the issuance of the bonds, or defaults in the observation or performance of any other covenants, conditions, or obligations stated in the resolution or order authorizing the issuance of its bonds, the owners of any of the bonds are entitled to a writ of mandamus issued by a court of competent jurisdiction compelling the district and its officials to observe and perform the covenants, the obligations, or conditions prescribed in the order or resolution authorizing the issuance of the district's bonds.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.515. CANCELLATION OF UNSOLD BONDS. (a) The board, by

order or resolution, may provide for the cancellation of all or any part of any bonds that have been submitted to and approved by the attorney general and registered by the comptroller, but not yet sold, and may provide for the issuance of new bonds in lieu of the old bonds in the manner provided by this chapter for the issuance of the original bonds including their approval by the attorney general and their registration by the comptroller.

(b) The order or resolution of the board shall describe the bonds to be canceled, and also shall describe the new bonds to be issued in lieu of the old bonds.

(c) A certified copy of the order or resolution of the board providing for the cancellation of the old bonds, together with the old bonds, shall be delivered to the comptroller, who shall cancel and destroy the old bonds and make a record of the cancellation.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

SUBCHAPTER H. ADDING AND EXCLUDING TERRITORY; CONSOLIDATING AND DISSOLVING DISTRICTS

Sec. 65.723. CONSOLIDATION OF DISTRICTS. Two or more districts governed by this chapter may consolidate into one district as provided by this subchapter.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.724. ELECTIONS TO APPROVE CONSOLIDATION. (a) After the board of each district has agreed on the terms and conditions of consolidation, which may include the assumption by each district of the other district's bonds, notes, or other obligations and adoption of a name for the consolidated district, the board of each district shall order an election in each of their respective districts to determine whether the districts should be consolidated.

(b) The board of each district shall order the election to be held on the same day in each district and shall give notice of the election for the time and in the manner provided by law for bond

elections under this chapter.

(c) The districts may be consolidated only if the qualified voters in each district voting at the election vote in favor of the consolidation.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.725. GOVERNING CONSOLIDATED DISTRICTS. (a) After two or more districts are consolidated, they become one district and are governed as one district.

(b) During a period of 90 days after the date of the election to approve consolidation, the officers of each district shall continue to act jointly as officers of the original districts to settle the affairs of their respective districts.

(c) The consolidation agreement may provide that the officers of the original districts shall continue to act jointly as officers of the consolidated district or name persons to serve as officers of the consolidated district until their successors assume office under Subsection (e) of this section.

(d) On the next available uniform election date, an election shall be called and held, and directors will be elected for the consolidated district in the same manner and for the same term as directors elected under Section 65.103 of this code.

(e) New officers of the consolidated district must qualify as officers of the district within the period of 90 days after the election and shall assume their offices at the expiration of the 90-day period.

(f) The current board shall approve the bond of each new officer.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.726. DEBTS OF ORIGINAL DISTRICTS. After two or more districts are consolidated, the debts of the original districts shall be protected and may not be impaired.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.727. DISSOLUTION OF DISTRICT PRIOR TO ISSUANCE OF BONDS. (a) If the board considers it advisable before the issuance of any bonds, notes, or other indebtedness, the board may dissolve a district and liquidate the affairs of the district as provided by this subchapter.

(b) If a majority of the board finds at any time before the issuance of bonds, notes, or other obligations or the final lending of its credit in another form that the proposed undertaking for any reason is impracticable or apparently cannot be successfully and beneficially accomplished, the board may issue notice of a hearing on a proposal to dissolve the district.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.728. NOTICE OF HEARING. The board shall post notice of the hearing on the bulletin board at the courthouse door of each county in which the district is located and at three or more other public places within the boundaries of the district and shall publish notice of the hearing two times in a newspaper with general circulation in the district. The notice must be posted and published at least one time no later than the 14th day before the date set for the hearing on the proposed dissolution of the district.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.729. HEARING. The board shall hear all interested persons and shall consider their evidence at the time and place stated in the notice.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug.

29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.730. BOARD'S ORDER TO DISSOLVE DISTRICT. If the board unanimously determines from the evidence that the best interests of the persons and property in the district will be served by dissolving the district, the board shall enter the appropriate findings and order in its records dissolving the district. Otherwise the board shall enter its order providing that the district has not been dissolved.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

Sec. 65.731. JUDICIAL REVIEW OF BOARD'S ORDER. The board's decree to dissolve the district may be appealed in the manner provided by Sections 65.708-65.710 of this code for the review of an order excluding land from the district.

Added by Acts 1983, 68th Leg., p. 2448, ch. 435, Sec. 4, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 447, Sec. 1, eff. Nov. 15, 1985.

CHAPTER 66. STORMWATER CONTROL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 66.001. DEFINITIONS. In this chapter:

(1) "District" means a stormwater control district.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(4) "Board" means the board of directors of a district.

(5) "Director" means a member of the board.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 36, eff. June 19, 1987; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.083, eff. Aug.

12, 1991.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 66.011. CREATION. A stormwater control district may be created pursuant to Article XVI, Section 59, of the Texas Constitution, as provided by this subchapter.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.012. PURPOSE OF DISTRICT. A district may be created to control stormwater and floodwater and to control and abate harmful excesses of water for the purpose of preventing area and downstream flooding in all or part of a watershed.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.013. COMPOSITION OF DISTRICT. A district may be composed of contiguous or noncontiguous areas within all or part of the watershed of a river, stream, creek, or bayou.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.014. PETITION. (a) To create a district, a person or the commissioners courts in the counties in which all or part of the district is to be located shall file a petition with the executive director requesting creation of the district.

(b) The petition must be signed by at least 50 persons who reside within the boundaries of the proposed district or by a majority of the members of the commissioners court in each county in which all or part of the district is to be located.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.015. CONTENTS OF PETITION. The petition must include:

(1) a description of the boundaries of the proposed district by metes and bounds or by lot and block number, if there is

a recorded map or plat and survey of the area;

(2) a statement of the general nature of the work proposed to be done by the district and the estimated cost of any work to be done by the district; and

(3) the proposed name of the district.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.016. DISTRICT NAME. (a) A district shall be named the _____ (Insert name of county, river, stream, creek, or bayou in district) Stormwater Control District.

(b) A district may not have the same name as any other district.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.018. NOTICE AND HEARING ON DISTRICT CREATION. If a petition is filed under Section 66.014, the commission shall give notice of an application as required by Section 49.011 and may conduct a hearing if the commission determines that a hearing is necessary under Section 49.011.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1070, Sec. 44, eff. Sept. 1, 1997.

Sec. 66.019. COMMISSION FINDINGS AND DECISION. (a) After considering the petition, the commission shall grant the petition if it finds that:

(1) the petition conforms to the requirements of Sections 66.014 and 66.015; and

(2) the projects proposed by the district are feasible and practicable, are necessary, and will be a benefit to land included in the district.

(b) In making its decision, if the commission finds that a part of the land to be included in the district will not be benefited by creation of the district, the commission shall make this finding, exclude the nonbenefited land from the proposed district, and redraw

the boundaries of the proposed district to conform to this change.

(c) The commission shall deny the petition if it finds that:

(1) the petition does not conform to the requirements of Sections 66.014 and 66.015 of this code; or

(2) the projects proposed for the district are not feasible, practicable, or necessary, or will not benefit any of the land proposed to be included in the district.

(d) A copy of the commission's order including its findings and decision shall be mailed to the petitioners as provided by rules of the commission.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 37, eff. June 19, 1987; Acts 1997, 75th Leg., ch. 1070, Sec. 45, eff. Sept. 1, 1997.

Sec. 66.020. APPEAL OF COMMISSION ORDER. The order of the commission granting or denying a petition may be appealed as provided by Chapter 2001, Government Code.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 66.021. TEMPORARY DIRECTORS. (a) If the commission grants the petition, it shall appoint five persons who reside within the boundaries of the proposed district to serve as temporary directors until the initial regular directors are elected.

(b) The person who submits the petition for creation of the district shall submit a list of at least five persons for appointment as temporary directors, and the commission shall consider those recommendations when making the appointments.

(c) The temporary directors must have the same qualifications for office as provided by Section 66.102 of this code for permanent directors.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 66.101. BOARD OF DIRECTORS. A district shall be governed by a board of directors composed of five members, who are elected as provided in Chapter 49.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 37, eff. Sept. 1, 1995.

Sec. 66.102. QUALIFICATION OF DIRECTORS. To serve as a director, a person must be at least 18 years old, a qualified voter, and a resident of the district.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.118. RULES. After notice and hearing, the board shall adopt rules to carry out this chapter, including rules providing procedures for giving notice and holding hearings before the board.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 66.201. GENERAL POWERS. The district may:

(1) acquire land to construct facilities for the district;

(2) construct regional stormwater retention and detention pond facilities to retain stormwater runoff and to prevent area and downstream flooding in the district;

(3) construct outfall drainage ditches and similar facilities to control stormwater and floodwater and prevent area and downstream flooding;

(4) provide for and use the land on which regional stormwater retention and detention pond facilities are located for park and recreational areas when the area is not used for holding water;

(5) provide financing for land and facilities and for construction of facilities from money obtained from sources provided by this chapter and other laws of this state;

(6) advise, consult, contract, cooperate with, and enter into agreements with the federal government and its agencies, the

state and its agencies, local governments, and persons; and

(7) apply for, accept, receive, and administer gifts, grants, loans, and other funds available from any source.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.202. PLAN FOR FACILITIES. (a) Before the district begins to acquire land and construct facilities, the district engineer under the supervision of the board shall prepare a detailed plan for the location of stormwater retention and detention ponds and outfall drainage ditches or other similar facilities within the district and for the acquisition of land and construction of those works and facilities.

(b) In preparing the plan, the district shall attempt to locate stormwater retention and detention ponds and outfall drainage ditches and other similar facilities so that they will provide the minimum amount of runoff in the district while at the same time providing the maximum amount of protection from area and downstream flooding.

(c) On completion of the plan by the employees, the board shall approve the plan as the tentative plan and shall submit the plan to the commission and to the commissioners court of each county in which all or part of the district is located.

(d) The commission and each commissioners court shall review the plan.

(e) Within 60 days after the date on which a plan is submitted to a commissioners court, the commissioners court shall prepare its suggestions for change in the plan and shall submit those suggestions in writing to the commission.

(f) Not later than 10 days after the first day on which the commission has received written suggestions from all commissioners courts to which the plan was submitted, the commission shall give notice and hold a hearing to consider the plan together with its suggestions and the suggestions for change from the commissioners courts. Notice shall be given and the hearing held as provided by Chapter 2001, Government Code.

(g) At the conclusion of the hearing, the commission shall issue an order stating the changes made in the plan, if any, and approving the plan.

(h) An order of the commission under this section may not be

appealed.

(i) Amendments and modifications to a plan shall be made in the manner provided by this section for preparation and approval of the original plan.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 66.216. TRANSFER OF LAND AND FACILITIES. (a) On completion of all facilities proposed to be built by the district, the district shall transfer title to the land and facilities other than detention ponds to the county or counties in which the land and facilities are located.

(b) Each county that receives transfer of title to land and facilities under Subsection (a) of this section shall maintain those facilities and shall use the land and facilities for the purpose of stormwater retention and detention ponds and for park and recreational areas as authorized for the district.

(c) If another regional flood control project is constructed by the state or a political subdivision of the state, the county may transfer title of the land and facilities transferred to it under this section to the state or to the political subdivision to be used for the purposes for which it was originally acquired or constructed by the district.

(d) A conveyance of land and facilities to the county under this section is made free and clear of all indebtedness of the district.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.217. EFFECT OF TRANSFER. (a) On conveyance of land and facilities to a county under this subchapter the district is no longer responsible for the land and facilities or their maintenance or upkeep, and the control over the land and facilities is solely in the county to which conveyed.

(b) Conveyance of land and facilities to a county under this subchapter does not affect the duties and responsibilities of the district to pay in full the principal of and the premium, if any, and

interest on any outstanding bonds or other indebtedness of the district and to observe and perform the covenants, obligations, or conditions provided by the orders or resolutions authorizing the bonds or other indebtedness.

(c) Notwithstanding the conveyance of land and facilities to a county under this subchapter, the district is solely responsible and liable for payment in full of the principal of and the premium and interest on any bonds or other indebtedness of the district.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.218. TRANSFER IN PORTIONS. This subchapter may not be construed as preventing the conveyance of a portion of the land and facilities proposed to be constructed by a district if the district's facilities are constructed in stages.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER E. GENERAL FISCAL PROVISIONS

Sec. 66.303. ANNUAL BUDGET. (a) The board shall prepare and approve an annual budget.

(b) The budget shall contain a complete financial statement, including a statement of:

(1) the outstanding obligations of the district;

(2) the amount of cash on hand to the credit of each fund of the district;

(3) the amount of money received by the district from all sources during the previous year;

(4) the amount of money available to the district from all sources during the ensuing year;

(5) the amount of the balances expected at the end of the year in which the budget is being prepared;

(6) the estimated amount of revenues and balances available to cover the proposed budget; and

(7) the estimated tax rate that will be required.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.304. AMENDING BUDGET. After the annual budget is adopted, it may be amended on the board's approval.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.310. ISSUANCE OF BONDS. (a) The board may issue and sell bonds in the name of the district to acquire land and construct facilities as provided by this chapter.

(b) Bonds issued by a district and projects and improvements of the district that are provided through the issuance of bonds are governed by Chapter 49.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 715, Sec. 38, eff. Sept. 1, 1995.

Sec. 66.311. MANNER OF REPAYMENT OF BONDS. The board may provide for the payment of the principal of and interest on the bonds from the levy and collection of property taxes on all taxable property within the district.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.313. FORM OF BONDS. (a) The district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of this state.

(c) The district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8 of the Business & Commerce Code and may be issued registrable as to principal or as to both principal and interest or may be issued in book entry form and may be made redeemable before maturity at the option of the district or may contain a mandatory redemption provision.

(d) The district's bonds may be issued in the form, denominations, and manner and under the terms, conditions, and details and shall be signed and executed as provided by the board in the resolution or order authorizing their issuance.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.314. PROVISIONS OF BONDS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds and may make additional covenants with respect to the bonds and the pledged fees.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged fees or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the fees on a parity with or subordinate to the pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in connection with the issuance of bonds.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.315. APPROVAL BY ATTORNEY GENERAL; REGISTRATION BY COMPTROLLER. (a) Bonds issued by the district and the records relating to their issuance must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, he shall approve them, and they shall be registered by the comptroller of public accounts.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.316. REFUNDING BONDS. Refunding bonds may be issued for the purposes and in the manner provided by general law including

Chapter 1207, Government Code.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.422, eff. Sept. 1, 2001.

Sec. 66.317. BONDS AS INVESTMENTS. District bonds are legal and authorized investments for:

(1) banks;
(2) savings banks;
(3) trust companies;
(4) savings and loan associations;
(5) insurance companies;
(6) fiduciaries;
(7) trustees;
(8) guardians; and
(9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.318. BONDS AS SECURITY FOR DEPOSITS. District bonds are eligible to secure deposits of public funds of the state and cities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.319. MANDAMUS BY BONDHOLDERS. In addition to all other rights and remedies provided by law, if the district defaults in the payment of principal, interest, or redemption price on its bonds when due or if it fails to make payments into any fund or funds created in the orders or resolutions authorizing the issuance of the bonds or defaults in the observation or performance of any other covenants, conditions, or obligations set forth in the orders or resolutions

authorizing the issuance of its bonds, the owners of any of the bonds are entitled to a writ of mandamus issued by a court of competent jurisdiction compelling and requiring the district and its officials to observe and perform the covenants, obligations, or conditions prescribed in the orders or resolutions authorizing the issuance of the district's bonds.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.320. APPLICATION OF OTHER LAWS. Bonds of the district are considered public securities under Chapter 1201, Government Code.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.422, eff. Sept. 1, 2001.

Sec. 66.321. TAX STATUS OF BONDS. Since a district created under this chapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are free from taxation by the state or by any city, county, special district, or other political subdivision of the state.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.322. LEVY OF TAXES. The board may annually levy taxes in the district to pay the principal of and interest on bonds issued by the district and the expense of assessing and collecting taxes.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.324. BOARD AUTHORITY. (a) The board may levy taxes for the entire year in which the district is created.

(b) The board shall levy taxes on all property within the boundaries of the district subject to district taxation.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.325. TAX RATE. In setting the tax rate, the board shall take into consideration the income of the district from sources other than taxation. On determination of the amount of tax required to be levied, the board shall make the levy and certify it to the tax assessor-collector.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.326. TAX APPRAISAL, ASSESSMENT, AND COLLECTION. (a) The Tax Code governs the appraisal, assessment, and collection of district taxes.

(b) The board may provide for the appointment of a tax assessor-collector for the district or may contract for the assessment and collection of taxes as provided by the Tax Code.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER F. DISSOLUTION

Sec. 66.401. PETITION FOR DISSOLUTION. After a district has completed all construction of facilities provided in the plan and conveyed those facilities to the designated counties and after all bonds and other indebtedness of the district are paid in full, the district shall submit to the commission a petition for dissolution accompanied by such evidence as the commission requires in its rules or by order to show that the plan prepared and adopted in accordance with Section 66.202 of this chapter has been carried out and all bonds and other indebtedness have been paid in full.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.402. ORDER TO DISSOLVE DISTRICT. (a) After considering the petition and the accompanying evidence, if the commission finds that the work is completed according to the plan and the facilities have been conveyed and that all bonds and other indebtedness have been retired, the commission shall order the district dissolved.

(b) If the commission finds that the work has not been completed according to the plan, that all facilities have not been conveyed, or that all bonds and other indebtedness have not been retired, the commission shall issue an order that will ensure that the work is completed by the district, all conveyances are made, and all debt will be retired, and on compliance with this order shall issue an order dissolving the district.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 24.007, eff. September 1, 2009.

Sec. 66.403. DISTRIBUTION OF ASSETS. (a) If at the time a district is dissolved, the district has any surplus funds in any of its accounts, the board shall transfer those funds to the county that assumes jurisdiction over the facilities conveyed by the district, and the county receiving the funds shall use those funds to maintain the facilities conveyed.

(b) If more than one county assumes jurisdiction over district facilities, the board shall transfer the funds to each county based on the proportion of the proceeds of all indebtedness incurred by the district to acquire the land and construct the facilities conveyed to that county.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

Sec. 66.404. EFFECT OF COMMISSION ORDER. On the issuance of the order of dissolution by the commission, the dissolved district ceases to exist as a governmental entity, and the board shall continue in existence only for the purpose of transferring district funds and disposing of district assets.

Added by Acts 1985, 69th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1985.

CHAPTER 67. NONPROFIT WATER SUPPLY OR SEWER SERVICE CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 67.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a corporation.

(2) "Corporation" means a water supply or sewer service corporation operating under this chapter.

(3) "Director" means a member of the board of directors.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.002. PURPOSE OF CORPORATION. A corporation may be organized under this chapter to provide:

(1) water supply, sewer service, or both for a municipality, a private corporation, an individual, or a military camp or base; and

(2) flood control and a drainage system for a political subdivision, private corporation, or another person.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.003. CREATION OF CORPORATION. (a) Three or more individuals who are citizens of this state may form a corporation by making an application to the secretary of state in the same manner as provided by law for an application for a private corporation.

(b) The application for charter must include the number of directors and the name of each director.

(c) The name designated for the corporation must include the words "Water Supply Corporation."

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.004. APPLICATION OF TEXAS NON-PROFIT CORPORATION ACT. To the extent it does not conflict with this chapter, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a corporation created under:

(1) this chapter; or

(2) Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.005. DIRECTORS. (a) A corporation may not have more than 21 directors.

(b) The corporation may increase the number of directors by amendment to the bylaws but may not exceed the limit imposed by Subsection (a).

(c) The bylaws of the corporation may provide that directors serve staggered terms of approximately two or three years.

(d) At the first annual meeting of the shareholders, the directors shall be divided into two or three classes according to the length of the terms the directors serve. The classification of directors may not take effect before that meeting.

(e) The division of the directors and the corresponding terms must be set so that:

(1) one-half of the directors, as nearly as possible, are elected annually, if a two-year term is provided; or

(2) one-third of the directors, as nearly as possible, are elected annually, if a three-year term is provided.

(f) After the implementation of two-year or three-year terms for directors, as directors' terms expire, the members shall elect their successors to serve until the second or third succeeding annual meeting after their election, as appropriate.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.0051. QUALIFICATIONS FOR ELECTION OR APPOINTMENT AS DIRECTOR. (a) To be qualified for election or appointment as a director, a person must be:

(1) 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable; and

(2) a member or shareholder of the corporation.

(b) In addition to the qualifications prescribed by Subsection (a), a person is not qualified to serve as a director if the person:

(1) has been determined by a final judgment of a court exercising probate jurisdiction to be:

(A) totally mentally incapacitated; or

(B) partially mentally incapacitated without the right to vote; or

(2) has been finally convicted of a felony from which the

person has not been pardoned or otherwise released from the resulting disabilities.

(c) If the board determines that a person serving as a director does not have the qualifications prescribed by Subsections (a) and (b), the board shall, not later than the 60th day after the date the board makes that determination, remove the director and fill the vacancy by appointing a person who has the qualifications prescribed by those subsections.

Added by Acts 2011, 82nd Leg., R.S., Ch. 10 (S.B. 333), Sec. 1, eff. September 1, 2011.

Sec. 67.0052. BALLOT APPLICATION. (a) To be listed on the ballot as a candidate for a director's position, a person must file an application with the corporation that includes:

(1) the director's position sought, including any position number or other distinguishing number;

(2) if the corporation has 1,500 or more members or shareholders, a petition signed by 20 members or shareholders requesting that the person's name be placed on the ballot as a candidate for that position;

(3) the person's written consent to serve, if elected;

(4) biographical information about the person; and

(5) a statement of the person's qualifications, including a statement that the person has the qualifications prescribed by Section 67.0051.

(b) The application must be filed with the corporation not later than the 45th day before the date of the annual meeting. The corporation shall notify the members or shareholders of the application deadline not later than the 30th day before the deadline.

(c) The corporation shall make available director candidate application forms at the corporation's main office and shall provide application forms by mail or electronically on request.

(d) This section applies only to a corporation that provides retail water or sewer service.

Added by Acts 2011, 82nd Leg., R.S., Ch. 10 (S.B. 333), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 84 (S.B. 447), Sec. 1, eff. May 18, 2013.

Sec. 67.0053. BALLOT. (a) Not later than the 30th day before the date of an annual meeting, the corporation shall mail to each member or shareholder of record:

(1) written notice of the meeting;

(2) the election ballot; and

(3) a statement of each candidate's qualifications, including biographical information as provided in each candidate's application.

(b) The election ballot must include:

(1) the number of directors to be elected; and

(2) the names of the candidates for each position.

(c) This section:

(1) applies only to a corporation that provides retail water or sewer service; and

(2) does not apply to an election in relation to a candidate for a director's position for which the board has adopted a resolution under Section 67.0055.

Added by Acts 2011, 82nd Leg., R.S., Ch. 10 (S.B. 333), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 84 (S.B. 447), Sec. 2, eff. May 18, 2013.

Sec. 67.0054. ELECTION PROCEDURES. (a) A member or shareholder may vote:

(1) in person at the annual meeting;

(2) by mailing a completed ballot to the office of the independent election auditor selected under Section 67.007(d) or to the corporation's main office, which ballot must be received by the corporation not later than noon on the business day before the date of the annual meeting; or

(3) by delivering a completed ballot to the office of the independent election auditor or to the corporation's main office not later than noon on the business day before the date of the annual

meeting.

(b) The independent election auditor shall receive and count the ballots before the annual meeting is adjourned.

(c) For each director's position, the candidate who receives the highest number of votes or who is the subject of a resolution described by Section 67.0055 is elected.

(d) If two or more candidates for the same position tie for the highest number of votes for that position, those candidates shall draw lots to determine who is elected.

(e) The independent election auditor shall provide the board with a written report of the election results.

(f) The board may adopt necessary rules or bylaws to implement this section, including rules or bylaws to ensure the fairness, integrity, and openness of the voting process.

(g) This section applies only to a corporation that provides retail water or sewer service.

Added by Acts 2011, 82nd Leg., R.S., Ch. 10 (S.B. 333), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 84 (S.B. 447), Sec. 3, eff. May 18, 2013.

Sec. 67.0055. ELECTION OF UNOPPOSED CANDIDATE. (a) This section applies only to an election for a director's position on a board of a corporation that provides retail water or sewer service in which a candidate who is to appear on the ballot for the position is unopposed.

(b) The board by resolution may declare a candidate elected to a director's position if the board certifies in writing that the candidate is unopposed for the position. A copy of the resolution shall be posted at the corporation's main office.

(c) If a declaration is made under Subsection (b), the election for that position is not held.

(d) If the election for the unopposed candidate would have been held with an annual meeting of the members or shareholders of the corporation, the text of the declaration described by Subsection (b) shall be read into the record at the annual meeting.

(e) The ballots used at a separate election that is held at the

same time as an election for an unopposed candidate would have been held shall include after measures or contested races the position and name of a candidate declared elected under this section, under the heading "Unopposed Candidates Declared Elected."

(f) A person may not, by intimidation or by means of coercion, influence or attempt to influence a person to withdraw as a candidate or not to file an application for a place on the ballot so that an election may be canceled.

(g) The board may adopt necessary rules or bylaws to implement this section, including rules or bylaws to ensure the fairness, integrity, and openness of the process.

Added by Acts 2013, 83rd Leg., R.S., Ch. 84 (S.B. 447), Sec. 4, eff. May 18, 2013.

Sec. 67.006. OFFICERS. (a) The board shall elect a president, a vice president, and a secretary-treasurer following the issuance of a charter and after each annual meeting of the membership or shareholders. At the meeting, each member or stockholder may be allowed only one vote regardless of the number of memberships or stock certificates held by the person.

(b) The board may require a bond of an officer for faithful performance of the officer's duties.

(c) The salary of an officer of the corporation other than secretary-treasurer or a manager employed under Section 67.012 may not exceed $5,000 a year. The board shall set the secretary-treasurer's salary at an amount commensurate with the secretary-treasurer's duties.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.18(a), eff. Sept. 1, 1999.

Sec. 67.007. ANNUAL OR SPECIAL MEETING OF RETAIL CORPORATION. (a) The annual meeting of the members or shareholders of the corporation must be held between January 1 and May 1 at a time specified by the bylaws or the board.

(a-1) A quorum for the transaction of business at a meeting of the members or shareholders is a majority of the members and

shareholders present. In determining whether a quorum is present, all members and shareholders who mailed or delivered ballots to the independent election auditor or the corporation on a matter submitted to a vote at the meeting are counted as present.

(b) The board shall adopt written procedures for conducting an annual or special meeting of the members or shareholders in accordance with this section and Sections 67.0052, 67.0053, and 67.0054. The procedures shall include the following:

(1) notification to eligible members or shareholders of the proposed agenda, location, and date of the meeting;

(2) director election procedures, including candidate application procedures;

(3) approval of the ballot form to be used; and

(4) validation of eligible voters, ballots, and election results.

(c) The board shall adopt an official ballot form to be used in conducting the business of the corporation at any annual or special meeting. No other ballot form will be valid. Ballots from members or shareholders are confidential and are exempted from disclosure by the corporation until after the date of the relevant election.

(d) The board shall select an independent election auditor not later than the 30th day before the scheduled date of the annual meeting. The independent election auditor is not required to be an experienced election judge or auditor and may serve as an unpaid volunteer. At the time of selection and while serving in the capacity of an independent election auditor, the independent election auditor may not be associated with the corporation as:

(1) an employee;

(2) a director or candidate for director; or

(3) an independent contractor engaged by the corporation as part of the corporation's regular course of business.

(e) This section applies only to a corporation that provides retail water or sewer service.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 54, Sec. 1, eff. May 10, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 10 (S.B. 333), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 84 (S.B. 447), Sec. 5, eff. May

18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 84 (S.B. 447), Sec. 6, eff. May 18, 2013.

Sec. 67.0075. ANNUAL OR SPECIAL MEETING OF OTHER CORPORATION. A corporation to which Section 67.007 does not apply shall comply with the annual meeting and director election provisions prescribed by Chapter 22, Business Organizations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 84 (S.B. 447), Sec. 7, eff. May 18, 2013.

Sec. 67.008. DISTRIBUTION OF PROFITS. (a) The incorporators may provide in the charter of the corporation that a dividend will not be paid on the stock and that all profits of the corporation will be paid annually to political subdivisions, private corporations, or other persons that have transacted business with the corporation during the previous year.

(b) The corporation shall distribute any profits under Subsection (a) in direct proportion to the amount of business the corporation transacts with each entity during that year.

(c) The corporation may not make a distribution under Subsection (a) if the corporation has unpaid indebtedness.

(d) A corporation may allocate to a sinking fund an amount of the annual profits as determined necessary by the board for maintenance, operation, and replacements.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.009. FACILITIES. A corporation may construct, acquire, lease, improve, extend, or maintain a facility, plant, equipment, or appliance helpful or necessary to provide more adequate sewer service, flood control, or drainage for a political subdivision.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.010. POWER TO CONTRACT WITH OTHER ENTITIES. (a) A

corporation may enter into a contract with any political subdivision, federal agency, or other entity for the acquisition, construction, or maintenance of a project or improvement for an authorized purpose.

(b) A corporation may obtain money from any political subdivision of this state, federal agency, or other entity to finance the acquisition or construction of a project or improvement for an authorized purpose.

(c) A corporation may encumber the project or improvement and may encumber any income, fees, rents, and other charges derived from the operation of the project or improvement. The corporation may issue bonds, notes, or warrants to secure payment of funds received. Indebtedness authorized by this subsection is a charge only on specifically encumbered property and revenues and is not a general obligation of indebtedness of the corporation.

(d) A political subdivision may contract with a corporation under Section 552.014, Local Government Code, to carry out this chapter. If a corporation issues bonds secured by a contract entered into under Section 552.014, Local Government Code, the corporation is considered to be acting for or on behalf of that political subdivision for the purposes of Section 1201.002(1), Government Code. A political subdivision is authorized to approve by ordinance, resolution, or order the articles of incorporation and the bylaws of a corporation that is created for the purpose of constructing facilities under a contract as provided by Section 552.014, Local Government Code.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 248, Sec. 56, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(32), eff. April 1, 2009.

Sec. 67.0105. WATER FOR FIRE SUPPRESSION. (a) A corporation may provide a water supply to a governmental entity or volunteer fire department for use in fire suppression.

(a-1) A corporation may enter into a contract with a governmental entity or a volunteer fire department to supply water to fire hydrants owned by the governmental entity or the corporation for

use in fire suppression by the governmental entity's fire department or a volunteer fire department. The contract must be under terms that are mutually beneficial to the contracting parties.

(b) The furnishing of a water supply and fire hydrant equipment by a governmental entity or a volunteer fire department directly or through another entity by a lease, contract, or any other manner is an essential governmental function and not a proprietary function for all purposes, including the application of Chapter 101, Civil Practice and Remedies Code.

(c) A corporation that provides a governmental entity or volunteer fire department with a water supply or fire hydrant equipment to carry out the governmental function described by Subsection (b) may be liable for damages only to the extent that the governmental entity or volunteer fire department would be liable if the governmental entity or volunteer fire department were performing the governmental function directly.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.19(a), eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 290 (H.B. 1814), Sec. 1, eff. September 1, 2011.

Text of section as amended by Acts 2003, 78th Leg., ch. 46, Sec. 1

Sec. 67.011. ADDITIONAL POWERS OF CORPORATION. In addition to other powers granted by this chapter, a corporation may:

(1) own, hold, lease, or otherwise acquire water wells, springs, or other sources of water supply;

(2) build, operate, and maintain pipelines to transport water or wastewater;

(3) build and operate plants and equipment necessary to distribute water or to treat and dispose of wastewater; and

(4) sell water or provide wastewater services to a political subdivision, a private corporation, or an individual.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 669, Sec. 151, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 46, Sec. 1, eff. May 15, 2003.

Text of section as amended by Acts 2003, 78th Leg., ch. 512, Sec. 1

Sec. 67.011. POWERS OF CORPORATION IN CERTAIN COUNTIES. (a) In a county with a population of less than 3.3 million, a corporation may:

(1) own, hold, lease, or otherwise acquire water wells, springs, or other sources of water supply;

(2) build, operate, and maintain pipelines to transport water or wastewater;

(3) build and operate plants and equipment necessary to distribute water or to treat and dispose of wastewater;

(4) sell water or provide wastewater services to a political subdivision, a private corporation, or an individual; and

(5) establish and enforce reasonable customer water conservation practices and prohibit excessive or wasteful uses of potable water.

(b) A corporation may enforce customer water conservation practices under Subsection (a)(5) by assessing reasonable penalties as provided in the corporation's tariff. A penalty may be appealed in the same manner as provided for appeal of new customer service costs under Section 13.043(g). In an appeal, the commission shall approve a corporation's penalty if the commission determines that the penalty is clearly stated in the tariff, that the penalty is reasonable, and that the corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all the corporation's customers.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 151, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 512, Sec. 1, eff. June 20, 2003.

Sec. 67.012. USE OF MANAGER. The board may employ a manager to handle the business of the corporation under the direction of the board. The board shall set the salary for the manager.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.013. USE OF COUNSEL. The board may employ and compensate counsel to represent the corporation as the board determines is necessary.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.014. DEPOSITORY FOR FUNDS; PERMITTED INVESTMENTS. (a) The board shall select as depository for the funds of the corporation a bank in this state that is insured by the Federal Deposit Insurance Corporation and require from the depository a bond in an amount the board finds necessary to protect the corporation.

(b) Funds allocated by the board to a sinking fund for replacement, amortization of debts, and the payment of interest that are not required to be spent in the year in which deposited shall be:

(1) invested in bonds or other evidence of indebtedness of the United States;

(2) placed with the depository in an interest-bearing savings account;

(3) invested in shares or share accounts in a savings and loan association insured by the Federal Deposit Insurance Corporation; or

(4) invested in an investment that is authorized under Subchapter A, Chapter 2256, Government Code, and by a written investment policy approved by the board that complies with Section 2256.005, Government Code.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 258, Sec. 1, 2, eff. May 28, 1999.

Text of section effective until January 1, 2022

Sec. 67.015. EXEMPTION FROM SECURITIES ACT. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) does not apply to:

(1) a note, bond, or other evidence of indebtedness issued by a corporation doing business in this state to the United States;

(2) an instrument executed to secure a debt of a corporation to the United States; or

(3) the issuance of a membership certificate or stock certificate of a corporation.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Amended by:
Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.44, eff. January 1, 2022.

Text of section effective on January 1, 2022

Sec. 67.015. EXEMPTION FROM SECURITIES ACT. The Securities Act (Title 12, Government Code) does not apply to:

(1) a note, bond, or other evidence of indebtedness issued by a corporation doing business in this state to the United States;

(2) an instrument executed to secure a debt of a corporation to the United States; or

(3) the issuance of a membership certificate or stock certificate of a corporation.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.44, eff. January 1, 2022.

Sec. 67.016. TRANSFER OR CANCELLATION OF STOCK, MEMBERSHIP, OR OTHER RIGHT OF PARTICIPATION. (a) A person or entity that owns any stock of, is a member of, or has some other right of participation in a corporation may not sell or transfer that stock, membership, or other right of participation to another person or entity except:

(1) by will to a person who is related to the testator within the second degree by consanguinity;

(2) by transfer without compensation to a person who is related to the owner of the stock or other interest within the second degree by consanguinity; or

(3) by transfer without compensation or by sale to the corporation.

(b) Subsection (a) does not apply to a person or entity that transfers the membership or other right of participation to another person or entity as part of the conveyance of real estate from which the membership or other right of participation arose.

(c) The transfer of stock, a membership, or another right of participation under this section does not entitle the transferee to water or sewer service unless each condition for water or sewer

service is met as provided in the corporation's published rates, charges, and conditions of service. A transfer and service application must be completed on the corporation's standardized forms and filed with the corporation's office in a timely manner. The conditions of service may not require a personal appearance in the office of the corporation if the transferee agrees in writing to accept the rates, charges, and conditions of service.

(d) The corporation may make water or sewer service provided as a result of stock, a membership, or another right of participation in the corporation conditional on ownership of the real estate designated to receive service and from which the membership or other right of participation arises.

(e) The corporation may cancel a person's or other entity's stock, membership, or other right of participation if the person or entity fails to:

(1) meet the conditions for water or sewer service prescribed by the corporation's published rates, charges, and conditions of service; or

(2) comply with any other condition placed on the receipt of water or sewer service under the stock, membership, or other right of participation.

(f) Consistent with Subsection (a), the corporation may reassign canceled stock or a canceled membership or other right of participation to a person or entity that has legal title to the real estate from which the canceled membership or other right of participation arose and for which water or sewer service is requested.

(g) Notwithstanding Subsection (a), the corporation shall reassign canceled stock or a canceled membership or other right of participation to a person or entity that acquires the real estate from which the membership or other right of participation arose through judicial or nonjudicial foreclosure. The corporation may require proof of ownership resulting from the foreclosure.

(h) Service provided following a transfer under Subsection (f) or (g) is made subject to compliance with the conditions for water or sewer service prescribed by the corporation's published rates, charges, and conditions of service.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.017. VOLUNTARY CONTRIBUTIONS ON BEHALF OF EMERGENCY SERVICES. (a) A corporation may as part of its billing process collect from its customers a voluntary contribution, including a voluntary membership or subscription fee, on behalf of a volunteer fire department or an emergency medical service.

(b) A corporation that collects contributions under this section shall provide each customer at the time that the customer first subscribes to the water or sewer service, and at least annually thereafter, a written statement:

(1) describing the procedure by which the customer may make a contribution with the customer's bill payment;

(2) designating the volunteer fire department or emergency medical service to which the corporation will deliver the contribution;

(3) informing the customer that a contribution is voluntary; and

(4) describing the deductibility status of the contribution under federal income tax law.

(c) A billing by the corporation that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it may be deducted from the billed amount.

(d) The corporation shall promptly deliver contributions that it collects under this section to the designated volunteer fire department or emergency medical service, except that the corporation may keep from the contributions an amount equal to the lesser of:

(1) the corporation's expenses in administering the contribution program; or

(2) five percent of the amount collected as contributions.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

CHAPTER 68. SHIP CHANNEL SECURITY DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 68.001. DEFINITIONS. In this chapter:

(1) "Board" means a district's board of directors.

(2) "District" means a ship channel security district created under this chapter.

(3) "Security project" means a project promoting or aiding

security in a district.

(4) "Security service" means a service promoting or aiding security in a district.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.002. NATURE OF DISTRICT; PURPOSE. A district is a special district and political subdivision of this state. A district is created under Section 59, Article XVI, Texas Constitution, and is essential to accomplish the purposes of that section and Sections 52 and 52-a, Article III, Texas Constitution.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.003. PUBLIC PURPOSE OF SECURITY PROJECTS. A security project is owned, used, and held for public purposes by the district.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.004. LIBERAL CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed in conformity with the findings and purposes stated in this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.005. GENERAL WATER DISTRICT LAW NOT APPLICABLE. Chapter 49 does not apply to a district.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

SUBCHAPTER B. FACILITIES

Sec. 68.051. APPLICABILITY TO FACILITIES. (a) In this section:

(1) "Chemical manufacturers' association" means an association of chemical manufacturers, refiners, and supporting distribution and terminal facility managers that operate in a district.

(2) "Chemical manufacturers' association facility" means a facility owned by a member of a chemical manufacturers' association.

(3) "Mutual aid organization" means an organization that operates in a district and whose:

(A) primary purpose is the promotion of social welfare by providing assistance for the common good and general welfare to and within the communities of its members for emergency fire protection and other public safety matters; and

(B) members include various industries and governmental entities with the resources required to participate in those activities.

(b) This chapter applies to the following types of facilities in the district:

(1) a chemical manufacturers' association facility;

(2) a mutual aid organization facility;

(3) a facility as defined in 46 U.S.C. Section 70101;

(4) a facility described by 33 C.F.R. Section 105.105(a);

(5) a facility subject to an area maritime transportation security plan under 46 U.S.C. Section 70103(b);

(6) a facility subject to 40 C.F.R. Part 112;

(7) a general shipyard facility as defined by 46 C.F.R. Section 298.2;

(8) a facility included in one or more of the following categories and codes of the 2007 North American Industry Classification System:

(A) crude petroleum and natural gas extraction, 211111;

(B) petroleum refineries, 324110;

(C) petrochemical manufacturing, 3251;

(D) petroleum lubricating oil and grease manufacturing, 324191;

(E) all other petroleum and coal products manufacturing, 324199;

(F) all other chemical manufacturing, 325998;

(G) petroleum bulk stations and terminals, 424710;

(H) plastics, chemical, and petroleum wholesalers, 424610, 424690, and 424720;

(I) transportation, including rail, water, and road transportation and pipelines, 482111-482112, 483111-483114, 484110-484230, 486110-486990, 488210, 488390, and 488490;

(J) port and harbor operations, 488310;

(K) marine cargo handling, 488320;

(L) warehousing and storage, including general, refrigerated, farm and other, 493110, 493120, 493130, and 493190; and

(M) deep sea and coastal freight and passenger transportation, 483111-483114; and

(9) a facility described by Subsection (c).

(c) Except as provided by Subsection (d), after the district is created, the commissioners court that created the district by order may provide for this chapter to apply to any other type of facility that the district by petition requests the court to add.

(d) This chapter does not apply to the following facilities:

(1) a residential property, including a single-family or multifamily residence;

(2) a retail or service business that is not a facility as defined by 46 U.S.C. Section 70101;

(3) a public access facility as defined by 33 C.F.R. Section 101.105; or

(4) a facility that is not listed under Subsection (b) and that is owned by:

(A) an electric utility or a power generation company as defined by Section 31.002, Utilities Code;

(B) a gas utility as defined by Section 101.003 or 121.001, Utilities Code;

(C) a telecommunications provider as defined by Section 51.002, Utilities Code; or

(D) a person who provides to the public cable television or advanced telecommunications services.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 1, eff. May 20, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 198 (S.B. 1225), Sec. 1, eff. May

25, 2013.

Sec. 68.052. DESIGNEES FOR FACILITY OWNERS. A facility's owner may designate a person:

(1) to act for the owner in connection with a district; and

(2) to bind the owner under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.053. USE OF CERTAIN DEPARTMENT OF TRANSPORTATION PROPERTY FOR SHIP CHANNEL SECURITY. (a) In this section, "department" means the Texas Department of Transportation.

(b) Use of the department's facilities or property to serve a project aiding security in a ship channel security district created under this chapter serves a transportation purpose. A ship channel security district or a county whose commissioners court has created a ship channel security district may enter into an agreement with the department to provide for use of the department's facilities or property to aid security in the district.

(c) A county that has entered into an agreement with the department for use of the department's fiber optic network for transportation purposes may use the fiber optic network to serve a project aiding security in a ship channel security district created under this chapter in the same manner as other transportation purposes unless the agreement precludes the use of the fiber optic network for that purpose.

Added by Acts 2009, 81st Leg., R.S., Ch. 4 (H.B. 1871), Sec. 1, eff. April 29, 2009.

SUBCHAPTER C. CREATION

Sec. 68.101. DISTRICT CREATION BY CERTAIN POPULOUS COUNTIES WITH SHIP CHANNELS. A district may be created only by the commissioners court of a county with a population of 3.3 million or more that has a ship channel in the county.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff.

June 15, 2007.

Sec. 68.102. PETITION FOR CREATION. A district may be created only if the commissioners court of the county in which the district is proposed to be created receives a petition requesting the district's creation. The petition must be signed by:

(1) the owners of a majority of facilities in the proposed district; and

(2) the owners of a majority of the assessed value of facilities in the proposed district according to the most recent certified property tax rolls of the county.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.103. CONTENTS OF PETITION; DISTRICT TERRITORY. The petition must:

(1) propose a name for the district, which must:

(A) generally describe the location of the district; and

(B) be of the form "_____ Ship Channel Security District";

(2) state the general nature of the security projects and security services to be provided by the district; and

(3) describe the proposed district territory and the boundaries of four or five security zones inside the proposed district.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.104. NOTICE OF HEARING; CONTENTS OF NOTICE. (a) The commissioners court of the county in which a district is proposed to be created shall set a date, time, and place for a hearing to consider the petition received by the commissioners court.

(b) The commissioners court shall issue public notice of the hearing. The notice must state:

(1) the date, time, and place of the hearing; and

(2) that any person may appear, present evidence, and testify for or against the creation of the proposed district.

(c) The commissioners court shall publish the notice in a newspaper of general circulation in the county at least one time at least 30 days before the hearing date.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.105. HEARING. At the hearing, any interested person may appear in person or by attorney, present evidence, and offer testimony for or against the creation of the proposed district.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.106. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. After the hearing, the commissioners court shall consider whether to create the proposed district. The commissioners court must make the following findings before approving a petition requesting creation of a district:

(1) the district will serve a public use and benefit;

(2) facilities in the district will benefit from the security projects and security services proposed to be provided by the district;

(3) the creation of the district is in the public interest and useful for the protection of facilities in the district against the threat posed by terrorism; and

(4) the creation of the district is necessary to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.107. ORDER CREATING DISTRICT; CHANGES. (a) If the commissioners court makes the findings under Section 68.106, the

commissioners court by order may create the proposed district.

(b) The commissioners court may include in the order any changes or modifications to the proposed district as the court determines are appropriate to reflect the intent of the petition requesting creation of the district.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

SUBCHAPTER D. BOARD OF DIRECTORS

Sec. 68.151. GOVERNING BODY; COMPOSITION. A district is governed by a board of at least 10 but not more than 13 directors, appointed or serving as follows:

(1) two directors for each security zone appointed by the commissioners court of the county and nominated as provided by Section 68.152;

(2) one director appointed for the district at large by the commissioners court of the county under Section 68.153;

(3) one director appointed under Section 68.154; and

(4) any director serving under Section 68.155.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.152. SECURITY ZONE DIRECTORS. (a) The commissioners court of the county shall appoint as directors for each security zone the one or two nominees as appropriate for the staggering of terms who received the highest number of votes in a vote by the facility owners in each security zone. Each person nominated as a director must be employed by a facility owner at a facility in the zone.

(b) After reviewing the list of persons nominated to be directors, the commissioners court shall approve or disapprove the nominations for each security zone.

(c) If the commissioners court is not satisfied with the list provided for a security zone, the facility owners in the security zone shall provide to the court a new list under Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 2, eff. May 20, 2011.

Sec. 68.153. AT-LARGE DIRECTOR. The director appointed by the commissioners court for the district at large may be:

(1) a person employed by a member of an association that includes steamship owners, operators, and agents and stevedoring and terminal companies and that:

(A) is a Texas nonprofit corporation; and

(B) leases space in the district; or

(2) any other person considered appropriate by the commissioners court.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.154. MUNICIPAL DIRECTOR. (a) If there is a countywide association of mayors and city councils of municipalities in a county that creates a district, the association shall appoint one director.

(b) If there is not an association described by Subsection (a), the municipalities in the district shall appoint a director. If there is more than one municipality in the district, the governing body of each municipality by resolution may vote in favor of a nominated person and a person who receives the votes of a majority of governing bodies is appointed director.

(c) The director appointed under this section must reside in a municipality adjacent to the largest ship channel in the district.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.155. PORT AUTHORITY; EX OFFICIO DIRECTOR. (a) In this section, "port authority" means a navigation district located wholly or partly in the security district, and created or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(b) If a port authority is located in the district, the

executive director, or a person designated by the executive director, serves as a director. If more than one port authority is located in the district, the executive director, or a person designated by the executive director, of the port authority with the largest territory inside the district serves as a director.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.156. TERMS; INITIAL DIRECTORS. (a) Except as provided by Subsection (b), directors serve staggered two-year terms.

(b) The initial directors shall stagger their terms, with a majority of the directors serving two years, and a minority of directors serving one year. If the initial board has an even number of directors, the terms are staggered equally. If the initial directors cannot agree on the staggering, the directors shall draw lots to determine the directors who serve one-year terms.

(c) When a director's term expires, the successor director is appointed in the manner provided by this subchapter for that director position.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 3, eff. May 20, 2011.

Sec. 68.157. VACANCY. A vacancy in the board is filled by the remaining directors by appointing a person who meets the qualifications for the position, who shall serve for the unexpired term.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.158. QUORUM. For purposes of determining whether a quorum of the board is present, a vacant board position is not counted.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.159. OFFICERS. The board shall elect from its directors a presiding officer, a secretary, and any other officers the board considers necessary or appropriate.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.160. COMPENSATION. A director is not entitled to compensation for service on the board, but is entitled to reimbursement for necessary and reasonable expenses incurred in carrying out the duties of a director.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.161. MEETINGS. (a) Except as provided by Subsection (c), the board shall determine the frequency of its meetings and may hold meetings at any time the board determines.

(b) The board shall conduct its meetings in this state.

(c) The board shall meet at least once per year in addition to conducting hearings as necessary under Section 68.302.

(d) The board may combine its annual meeting, or any other meeting, with a hearing held under Section 68.302.

(e) At each annual meeting and at each hearing required by Section 68.302, the board shall make available to the public the following, except to the extent the board determines that disclosure may jeopardize the safety and security of a facility in the district:

(1) an accounting of all federal and district money received and spent by the district during the preceding year;

(2) a summary of all security projects implemented by the district, including a report detailing the effectiveness of the security projects;

(3) a description of all pending or planned district security projects; and

(4) an estimate of the money that will be received through

any proposed assessments and a description of how the money will be spent.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 4, eff. May 20, 2011.

Sec. 68.162. REMOVAL. The board may remove an appointed director for misconduct or failure to carry out the director's duties on receiving a written petition signed by a majority of the remaining directors.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

SUBCHAPTER E. POWERS AND DUTIES

Sec. 68.201. GENERAL POWERS OF DISTRICT. (a) A district has all powers necessary or required to accomplish the purposes for which it was created.

(b) A district may do anything necessary, convenient, or desirable to carry out the powers expressly granted or implied by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.202. APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICTS LAW. Except as provided by this chapter, a district has the powers of a district created under Chapter 375, Local Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.203. RULES. The district may adopt rules to govern the operation of the district.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.204. NAME CHANGE. A board by resolution may change a district's name.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.205. CONTRACTS; GENERALLY. A district may contract with any person for any district purpose.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.206. SECURITY PROJECTS AND SERVICES. (a) The board shall determine what security projects or security services the district will perform. A security project may include a project eligible for funding under a port security grant program of the United States Department of Homeland Security.

(b) A district may own, operate, and maintain a security project or provide a security service as reasonably necessary to carry out a district power under this chapter.

(c) A district may acquire, construct, complete, develop, own, operate, maintain, and lease a security project or part of a security project or provide a security service inside and outside its boundaries.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.207. CONTRACTS FOR SECURITY PROJECTS OR SERVICES. (a) A district may contract with any person to plan, establish, develop, construct, renovate, maintain, repair, replace, or operate a security project or to provide a security service.

(b) A district may lease to any person a security project or any part of a security project.

(c) A district may contract with any person for the use or operation of a security project or any part of a security project.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.208. CONTRACTS FOR JOINT USE OF SECURITY PROJECT. A district may contract with any person, public or private, for the joint use of a security project.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.209. CONTRACTS WITH DISTRICT BY GOVERNMENTAL ENTITY. This state, a municipality, a county, another political subdivision of this state, or any other person, without further authorization, may contract with the district to accomplish any district purpose.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.210. PROPERTY POWERS; GENERALLY. A district may acquire by grant, purchase, gift, devise, lease, or otherwise, and may hold, use, sell, lease, or dispose of any property, and licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of any of its powers under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.211. SUITS. A district may sue and be sued.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.212. NO EMINENT DOMAIN POWER. A district may not

exercise the power of eminent domain.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

SUBCHAPTER F. GENERAL FINANCIAL PROVISIONS

Sec. 68.251. GRANTS; LOANS. A district may apply for and accept a grant or loan from any person, including:

(1) the United States;

(2) this state; and

(3) a political subdivision of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.252. PAYMENT OF EXPENSES. A district may provide for payment of all expenses incurred in its establishment, administration, and operation.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.253. TAXES PROHIBITED. A district may not impose any tax, including a property tax or a sales and use tax.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.254. BONDS PROHIBITED. A district may not issue bonds.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.255. QUARTERLY FINANCIAL REPORT BY COMMISSIONERS COURT. The commissioners court shall provide a quarterly financial report to the board. The report must comply with generally accepted accounting

principles and list all federal money received by the county and all outstanding obligations by the county to fund the district and its functions.

Added by Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 5, eff. May 20, 2011.

Sec. 68.256. QUARTERLY GENERAL ACCOUNTING BY BOARD. The board shall prepare a quarterly accounting of the district's general operating and maintenance costs. The accounting must comply with generally accepted accounting principles.

Added by Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 5, eff. May 20, 2011.

SUBCHAPTER G. ASSESSMENTS

Sec. 68.301. AUTHORITY TO IMPOSE ASSESSMENT; HEARING REQUIRED. (a) The board may impose one or more assessments against one or more facilities for any district purpose, including for general district purposes or for a specific security project or security service.

(b) The board may not impose the assessment until the board holds the hearing required by this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 6, eff. May 20, 2011.

Sec. 68.302. PROPOSED ASSESSMENTS. A security project or security service may be financed under this chapter after a hearing notice given as required by this subchapter and a public hearing by the board on the advisability of:

(1) the security project or security service; and
(2) the proposed assessments.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.303. NOTICE OF HEARING. (a) Not later than the 30th day before the date of the hearing, the district shall provide notice of the hearing by certified mail, return receipt requested, to each facility owner:

(1) at the current address of each facility according to the appraisal record maintained by the appraisal district for that facility under Section 25.02, Tax Code; or

(2) if the appraisal records do not accurately reflect that address or do not show the physical location of a particular facility, at the facility's physical location as reflected by any other information available.

(b) The notice must include:

(1) the time and place of the hearing;

(2) the general nature of the proposed security project or security service;

(3) the estimated cost of the security project or security service; and

(4) the proposed method of assessment.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 7, eff. May 20, 2011.

Sec. 68.304. CONDUCTING HEARING; FINDINGS. (a) A hearing on a proposed security project or security service, whether conducted by the board or a hearing examiner, may be adjourned from time to time.

(b) At the conclusion of the hearing, the board by resolution shall make findings relating to:

(1) the advisability of the security project or security service;

(2) the nature of the security project or security service;

(3) the estimated cost;

(4) the facilities benefited;

(5) the method of assessment; and

(6) the method and time for payment of the assessment.

(c) If a hearing examiner is appointed to conduct the hearing, after conclusion of the hearing, the hearing examiner shall file with the board a report stating the examiner's findings and conclusions for the board's consideration.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.305. FACILITIES TO BE ASSESSED. (a) In accordance with the findings, the board may impose an assessment against all the facilities in the district or any portion of the facilities in the district, and may impose an assessment against fewer facilities than those proposed for assessment in the hearing notice.

(b) Except as provided by Subsection (c), the facilities to be assessed may not include a facility that is not in the district at the time of the hearing unless there is an additional hearing preceded by the required notice.

(c) The owner of a facility described by Subsection (b) may waive the right to notice and an assessment hearing and may agree to the imposition and payment of assessments at an agreed rate for the facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.306. ASSESSMENT RATE CHANGE. After notice and a hearing, the board by majority vote may increase or decrease the rate of assessment. The board must provide notice of the hearing in the manner provided by Section 68.303.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.307. OBJECTIONS; LEVY OF ASSESSMENT. (a) At a hearing on proposed assessments, at any adjournment of the hearing, or after consideration of the hearing examiner's report, the board shall hear and rule on all objections to each proposed assessment.

(b) The board by majority vote may amend proposed assessments

for any facility.

(c) After all objections have been heard and action has been taken with regard to those objections, the board by resolution shall impose the assessments on the facilities and shall specify the method of payment of the assessments. A facility shall pay assessments in one lump sum on the date designated by the board, unless the board allows the assessments to be paid in periodic installments under Subsection (d).

(d) Periodic installments must be in amounts sufficient to meet annual costs for security projects or security services provided by this chapter and continue for the number of years required to pay for the security projects and security services to be rendered.

(e) If assessments are imposed for more than one security project or security service, the board may provide that assessments collected for one security project or security service may be used for another security project or security service.

(f) The board shall establish a procedure for the use or refund of any assessments in excess of those necessary to finance a security project or security service for which those assessments were collected.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 8, eff. May 20, 2011.

Sec. 68.308. APPORTIONMENT OF ASSESSMENT. The board shall apportion the cost of a security project or security service to be assessed against a facility based on any reasonable assessment plan that results in imposing fair and equitable shares of the cost.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.309. ASSESSMENT ROLL. (a) Once the estimated total cost of a security project or security service is determined, the board shall impose the assessments against each facility against which an assessment may be imposed in the district. The board may

impose an annual assessment that is lower but not higher than the initial assessment.

(b) The board shall have an assessment roll prepared showing the assessments against each facility and the board's basis for the assessment. The assessment roll shall be filed with the secretary of the board or other officer who performs the function of secretary and be open for public inspection.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.310. SUPPLEMENTAL ASSESSMENTS. After notice and hearing in the manner required for original assessments, the board may make supplemental assessments to correct omissions or mistakes in the assessment:

(1) relating to the total cost of the security project or security service; or

(2) covering delinquencies or costs of collection.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.311. APPEAL. (a) Not later than the 30th day after the date that an assessment is adopted, a facility owner may file a notice appealing the assessment to the board.

(b) The board shall set a date to hear the appeal.

(c) Failure to file the notice in the time required by this section results in loss of the right to appeal the assessment.

(d) The board may make a reassessment or new assessment of the facility if the assessment against the facility is:

(1) set aside by a court;

(2) found excessive by the board; or

(3) determined invalid by the board.

(e) A reassessment or new assessment under Subsection (d)(1) may not violate the court order that set aside the assessment.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.312. APPEAL OF RESOLUTION. (a) A facility against which an assessment is made by board resolution may appeal the assessment to a district court in the county in the manner provided for the appeal of contested cases under Chapter 2001, Government Code.

(b) Review by the district court is by trial de novo.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.313. FAILURE TO PAY ASSESSMENT; LIENS FOR ASSESSMENTS. (a) If an assessed facility fails to pay an assessment as provided in a district's assessment plan, the district may impose a lien against the facility assessed.

(b) An assessment, a reassessment, or an assessment resulting from an addition to or correction of the assessment roll by the district, penalties and interest on an assessment or reassessment, an expense of collection, and reasonable attorney's fees incurred by the district:

(1) are a first and prior lien against the facility assessed;

(2) are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes; and

(3) are the personal liability of and a charge against the owners of the facility even if the owners are not named in the assessment proceedings.

(c) The lien is effective from the date of the board's resolution imposing the assessment until the date the assessment is paid. The board may enforce the lien in the same manner that the board may enforce an ad valorem tax lien against real property.

(d) This section applies to a property interest that is a facility listed in Section 68.051(b), including:

(1) an improvement or fixture; and

(2) an owned or leased property interest.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 9, eff. May

20, 2011.

Sec. 68.314. DELINQUENT ASSESSMENTS. A delinquent assessment incurs interest, penalties, and attorney's fees in the same manner as a delinquent ad valorem tax. The owner of a facility may pay at any time the entire assessment, with interest, penalties, and attorney's fees that have accrued on the assessment.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.315. ASSESSMENT OF GOVERNMENTAL ENTITIES AND NONPROFITS. (a) Except as provided by this section, the district may not impose an assessment on:

(1) a governmental entity, including a municipality, county, or other political subdivision; or

(2) an organization exempt from taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code.

(b) An entity or organization described by Subsection (a) may contract with a district to pay assessments under terms the district and the entity or organization consider advisable.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

SUBCHAPTER H. DISSOLUTION

Sec. 68.351. DISSOLUTION OF DISTRICT FOR FAILURE TO IMPOSE AN ASSESSMENT. A district is dissolved if the district has not imposed an assessment before the fifth anniversary of the date of the order creating the district under Section 68.107. The county that created the district assumes any district debts or assets.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

Sec. 68.352. DISSOLUTION OF DISTRICT BY BOARD VOTE OR OWNER

PETITION. (a) The board by majority vote may dissolve the district at any time.

(b) A district may be dissolved as provided by Section 375.262, Local Government Code.

(c) The county that created the district assumes any debts or assets of a dissolved district.

Added by Acts 2007, 80th Leg., R.S., Ch. 913 (H.B. 3011), Sec. 1, eff. June 15, 2007.

SUBCHAPTER I. ADDITION AND EXCLUSION OF TERRITORY AND FACILITIES

Sec. 68.401. PETITION BY BOARD TO ADD TERRITORY AND FACILITIES. (a) A board may petition the commissioners court of the county that created the district to add to the district territory that contains a facility in the county if the board finds that a security project or security service in the district benefits or will benefit the facility.

(b) The petition must describe:

(1) the territory to be added;

(2) the facilities in the territory to be added; and

(3) the total territory of the district after the addition of the territory.

(c) The petition must recommend a security zone in which the facility to be added should be included. The board may recommend modifying one or more security zones as necessary to add the facility. The board of a district that has four security zones may also recommend adding a fifth security zone as necessary to add the new facility. The recommendation must also note whether the security zone of any facilities will change if the petition is granted.

(d) If any part of an assessment imposed by the board is allocable to the facility to be added, the petition must describe the portion, amount, and payment terms of the portion of the assessment that is allocable to the facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 10, eff. May 20, 2011.

Sec. 68.402. HEARING AND ACTION ON BOARD'S PETITION TO ADD TERRITORY AND FACILITIES. The commissioners court:

(1) shall publish notice and conduct a hearing on the petition under Sections 68.104 and 68.105; and

(2) may grant the petition if the commissioners court determines that a security project or security service in the district benefits or will benefit the facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 10, eff. May 20, 2011.

Sec. 68.403. PETITION BY FACILITY OWNER TO ADD TERRITORY AND FACILITIES. (a) The owner of a facility in the county may petition the board of a district requesting that the board petition the commissioners court to add to the district territory that contains the facility in the county. The petition must describe the territory and facility to be added and be signed by each owner of the facility.

(b) If the board grants the petition, the board shall petition the commissioners court to add the territory and make recommendations to the court under Subsection (d).

(c) The petition the board submits to the commissioners court must describe:

(1) the territory to be added;

(2) the facilities in the territory to be added; and

(3) the total territory of the district after the addition of the territory.

(d) The board shall recommend the security zone in which the facility to be added should be included. The board may recommend modifying one or more security zones as necessary to add the facility. The board of a district that has four security zones may also recommend adding a fifth security zone as necessary to add the new facility. The recommendation must also note whether the security zone of any facilities will change if the petition is granted.

(e) If any part of an assessment imposed by the board is allocable to the facility to be added, the board must include with the petition it forwards to the commissioners court a description of the portion, amount, and payment terms of the portion of the assessment that is allocable to the facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 10, eff. May 20, 2011.

Sec. 68.404. ACTION ON FACILITY OWNER'S PETITION TO ADD TERRITORY AND FACILITIES. The commissioners court may grant the petition.

Added by Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 10, eff. May 20, 2011.

Sec. 68.405. MODIFICATION OF ORDER. A commissioners court that adds territory under this subchapter shall modify the order that created the district under Section 68.107 to:

(1) modify the territory;

(2) add the facility;

(3) describe any security zones created or modified under this section, including the location of any facilities whose zone has changed;

(4) identify the security zone in which the added facility is located; and

(5) describe the portion, amount, and terms of payment of an assessment imposed by the board that is allocable to the facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 10, eff. May 20, 2011.

Sec. 68.406. PETITION BY BOARD TO EXCLUDE TERRITORY AND FACILITIES. (a) On the request of a facility in the district or on its own motion, a board may petition the commissioners court of the county that created the district to exclude territory and included facilities from the district. The petition must include:

(1) a finding by the board that excluding the territory is practical, just, and reasonable;

(2) a description of the territory to be excluded; and

(3) a description of the total territory of the district after the exclusion of the territory.

(b) The petition may include recommendations to:

(1) modify one or more security zones or eliminate a security zone, provided that the district may not have fewer than four security zones; and

(2) modify assessments that the facility has not paid.

Added by Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 10, eff. May 20, 2011.

Sec. 68.407. HEARING AND ACTION ON BOARD'S PETITION TO EXCLUDE TERRITORY AND FACILITIES. (a) The commissioners court:

(1) shall publish notice and conduct a hearing on the petition under Sections 68.104 and 68.105; and

(2) may grant the petition if the commissioners court finds that exclusion of the territory that contains the facility is practical, just, and reasonable.

(b) A commissioners court that excludes territory under this section shall modify the order that created the district under Section 68.107 to:

(1) modify the territory;

(2) exclude the facility;

(3) describe any security zones modified or eliminated under this section, including the location of any facilities whose zone has changed; and

(4) modify unpaid assessments, as applicable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 99 (S.B. 1104), Sec. 10, eff. May 20, 2011.

TITLE 5. SPECIAL LAW DISTRICTS

CHAPTER 152. RIVER AUTHORITIES ENGAGED IN DISTRIBUTION AND SALE OF ELECTRIC ENERGY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 152.001. APPLICABILITY. (a) This chapter applies only to a river authority that, directly or through a corporation created under Section 152.051, is engaged in the distribution and sale of electric energy to the public.

(b) This chapter does not apply to any litigation instituted before May 28, 1981, that questions the legality of an act taken or a proceeding conducted by a river authority before that date.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 24, eff. Sept. 1, 1999.

Sec. 152.002. APPLICATION OF OTHER LAW. (a) Unless this chapter expressly provides otherwise, a law that limits, restricts, or imposes an additional requirement on a matter authorized by this chapter does not apply to an action or proceeding under this chapter.

(b) Chapters 1202 and 1204, Government Code, apply to revenue bonds, notes, or other obligations issued under this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

SUBCHAPTER B. NONPROFIT CORPORATION ACTING ON BEHALF OF RIVER AUTHORITY

Sec. 152.051. CREATION OF NONPROFIT CORPORATION. (a) The board of directors of a river authority by order may create one or more nonprofit corporations to act on behalf of the river authority as its authority and instrumentality.

(b) The Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a corporation created under this section.

(c) Sections 501.052, 501.053, 501.056, 501.057(b) and (c), 501.058, 501.062, 501.063, 501.064, except as that section applies to amending a corporation's bylaws, 501.065, 501.066, 501.068-501.072, 501.401-501.406, and Subchapters G and H, Chapter 501, Local Government Code, apply to a corporation created under this section, except that in those sections:

(1) a reference to the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) includes this chapter; and

(2) a reference to a unit includes a river authority to which this chapter applies.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.75, eff. April 1, 2009.

Sec. 152.052. POWERS OF NONPROFIT CORPORATION. (a) A corporation created under Section 152.051 may exercise any power of the creating river authority except a power relating to solid waste management activities or activities as an exempt wholesale generator,

but including the authority to acquire, develop, operate, and sell fuel, fuel reserves, and mineral interests. In this subsection, "exempt wholesale generator" has the meaning assigned by Section 32(a), Public Utility Holding Company Act of 1935 (15 U.S.C. Section 79z-5a(a)).

(b) When exercising a power under this chapter, a corporation created under Section 152.051 and the board of directors of the corporation have the same powers as the creating river authority and the authority's board, including the power to issue bonds or other obligations or otherwise borrow money on behalf of the river authority to accomplish any purpose of the corporation.

(c) With regard to the issuance of an obligation, the board of directors of a corporation created under Section 152.051 may exercise the powers granted to the governing body of:

(1) an issuer under Chapters 1201 and 1371, Government Code; and

(2) a public agency under Chapter 1204, Government Code.

(d) A corporation created under Section 152.051 and the creating river authority may:

(1) share officers, directors, employees, equipment, and facilities; and

(2) provide goods or services to each other at cost without the requirement of competitive bidding.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 25, eff. Sept. 1, 1999.

Sec. 152.053. BOARD OF DIRECTORS. (a) The board of directors of the river authority shall appoint the directors of a corporation created under Section 152.051.

(b) A member of the river authority's board of directors may serve as a member of the corporation's board of directors.

(c) The directors of the corporation serve at the will of the river authority's board of directors.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.054. SUPERVISION BY BOARD OF DIRECTORS OF RIVER

AUTHORITY. (a) The budget of a corporation created under Section 152.051 must be approved by the board of directors of the river authority.

(b) The activities of the corporation are subject to the continuing review and supervision of the river authority's board of directors.

(c) The issuance of bonds or other obligations under this chapter by a corporation created under Section 152.051 must be approved by the board of directors of the river authority.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.055. LIABILITY OF CORPORATE PROPERTY FOR TAXES AND SPECIAL ASSESSMENTS. The property of a corporation created under Section 152.051 is not exempt from taxes or special assessments imposed by this state or a municipality or other political subdivision of this state.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.056. TRANSFER OF RIVER AUTHORITY ASSETS TO CORPORATION. Notwithstanding any other law, the board of directors of a river authority may sell, lease, loan, or otherwise transfer some, all, or substantially all of the electric generation property of the river authority to a corporation created under Section 152.051. The property transfer must be made under terms approved by the board of directors of the river authority.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.057. APPLICATION OF OTHER LAW TO RIVER AUTHORITY. Reference in any other law to a river authority that is engaged in the distribution and sale of electric energy to the public includes a river authority that has created a corporation under Section 152.051 that is engaged in the distribution and sale of electric energy to the public.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.058. GUARANTEE AND OTHER CREDIT SUPPORT RELATING TO PUBLIC SECURITIES AND OTHER OBLIGATIONS. (a) In this section, "public security" has the meaning assigned by Section 1202.001, Government Code.

(b) Under Section 52-a, Article III, Texas Constitution, a river authority that has created a corporation under Section 152.051 may guarantee or otherwise provide credit support for any public security or other obligation or contract of that corporation if the board of directors of the river authority determines that the guarantee or other credit agreement:

(1) is beneficial to a public purpose of the river authority; and

(2) is for the public purpose of:

(A) the development and diversification of the economy of the state;

(B) the elimination of unemployment or underemployment in the state; or

(C) the development or expansion of commerce in the state.

(c) A determination by the board of directors of a river authority under Subsection (b) is conclusive.

(d) A guarantee or other credit agreement authorized by Subsection (b) may provide for the guarantee of or other credit support for public securities or other obligations or contracts of the corporation, all or a portion of which may be authorized, executed, and delivered in the future.

(e) Chapter 1202, Government Code, applies to a guarantee or other credit agreement under this section as if the guarantee or other credit agreement were a public security.

Added by Acts 2001, 77th Leg., ch. 430, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER C. ENERGY OR WATER CONSERVATION PROGRAMS

Sec. 152.101. AUTHORITY TO PARTICIPATE IN ENERGY OR WATER CONSERVATION PROGRAM. (a) A river authority may undertake, sponsor, initiate, coordinate, or otherwise participate in a program intended to conserve electric energy or water, including a program that:

(1) encourages the more efficient use of electric energy or water;

(2) reduces the total use of electric energy or water; or

(3) reduces maximum total electric generating capacity requirements through load management techniques.

(b) A determination by the board of directors of a river authority that a program described by Subsection (a) is intended and expected to accomplish a purpose described by that subsection is conclusive with respect to whether the program serves the stated purpose.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.102. PARTICIPATION IN CONSERVATION PROGRAM BY PERSON OTHER THAN RIVER AUTHORITY. (a) A conservation program may involve a grant or loan of money, services, or equipment to a person or entity other than the river authority engaged in the program.

(b) Any person, including an individual or any public or private entity, may enter into an agreement with a river authority with respect to a conservation program.

(c) A person participating in or receiving a benefit from a conservation program shall comply with the requirements of the program.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.103. PUBLIC PURPOSE AND GOVERNMENTAL FUNCTION. Each conservation program is a public purpose and governmental function of a river authority to conserve the natural resources of this state, including the air and the waters of the rivers and streams of this state, electricity, and fuels used in the generation of electricity, in accordance with Section 59(a), Article XVI, Texas Constitution.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

SUBCHAPTER D. ECONOMIC DEVELOPMENT PROGRAMS

Sec. 152.151. DEFINITION. In this subchapter, "economic development program":

(1) includes a program designed to:

(A) encourage economic diversification;

(B) contribute to the health and development of a community to improve the attractiveness of the community to public and private enterprises; or

(C) improve the quality or quantity of services essential for the development of viable communities and economic growth, including services related to education, transportation, public safety, recreation, health care, training, community planning, or employment; and

(2) does not include the promotion of retail wheeling of electric power and energy.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.152. APPLICABILITY. This subchapter applies only to a river authority that generates at least an annual average of 55 million kilowatt hours of electric energy.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.153. AUTHORITY FOR ECONOMIC DEVELOPMENT PROGRAM. (a) A river authority may sponsor and participate in an economic development program intended to strengthen the economic base and further the economic development of this state.

(b) A determination by the board of directors of a river authority that an economic development program is intended and expected to accomplish the program's stated purposes is conclusive with respect to whether the program serves the purposes of this subchapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.154. PROGRAM AREA. An economic development program must be within:

(1) the territorial boundaries of the sponsoring or participating river authority; or

(2) the river authority's electric or water service area.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.155. ESTABLISHMENT OF PROGRAM. (a) An economic development program may be established only by formal action of the board of directors of a river authority.

(b) The board of directors shall:

(1) establish the goals of the program;

(2) impose requirements on persons participating in or receiving a benefit from the program; and

(3) provide restrictions, procedures, and budget limits the board of directors determines are necessary to ensure that the governmental purposes of this subchapter and the program are achieved.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.156. PARTICIPATION IN PROGRAM BY PERSON OTHER THAN RIVER AUTHORITY. An economic development program may involve the granting or lending of money, services, or property to a person engaged in an economic development activity.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 27, eff. Sept. 1, 1999.

Sec. 152.157. STAFFING AND FUNDING OF PROGRAM. (a) A river authority may employ staff and spend its resources, other than money received from an ad valorem tax or a general appropriation, to further an economic development program.

(b) A river authority may apply for and receive money, grants, or other assistance from any source to implement an economic development program.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.158. AGREEMENT. A river authority and any public or private person may enter into an agreement with respect to an

economic development program.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.159. GUIDELINES FOR ASSISTANCE TO PUBLIC FIRE-FIGHTING ORGANIZATIONS. A river authority that proposes to provide scholarships, grants, loans, or financial assistance to a public fire-fighting organization shall adopt guidelines for determining:

(1) eligibility for the assistance;

(2) the amount of any loan, grant, or other assistance the river authority may provide; and

(3) the types of equipment, facilities, education, or training for which the assistance may be used.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.160. RECEIPT OF ELECTRIC SERVICE AS CONDITION FOR PARTICIPATION IN PROGRAM. A river authority may not condition participation in or the receipt of a benefit from an economic development program on the receipt of electric service from the authority.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.161. LIMITATIONS ON USE OF PROGRAM. (a) A river authority may not use an economic development program to:

(1) promote fuel switching or the substitution of electric power for another fuel or energy source; or

(2) provide an economic or other incentive to use electric power to preferentially market the use of electric power over another fuel or energy source.

(b) This section does not limit a power granted to a river authority by other law.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

SUBCHAPTER E. DEBT OBLIGATIONS OF RIVER AUTHORITY

Sec. 152.201. AUTHORITY TO ISSUE OBLIGATIONS. (a) A river authority may issue revenue bonds, notes, or other obligations for a purpose authorized by:

(1) this chapter; or

(2) another law, if the purpose relates to the generation, transmission, or distribution of electricity.

(b) This chapter constitutes full authority for a river authority to issue revenue bonds and other obligations without reference to any other law.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 28, eff. Sept. 1, 1999.

Sec. 152.202. SALE OR EXCHANGE OF OBLIGATIONS. Revenue bonds, notes, or other obligations issued under this subchapter may be:

(1) sold for cash at a public or private sale;

(2) issued on terms determined by the board of directors of the river authority in exchange for property or an interest in property the board of directors considers necessary or convenient for a purpose described by Section 152.201;

(3) issued in exchange for other matured or unmatured obligations of the river authority in the same principal amounts; or

(4) sold for cash in the amount equal to the principal amount of the obligations to:

(A) this state or an agency of this state;

(B) the United States; or

(C) an agency or corporation created or designated by this state or the United States.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.203. INDEPENDENT APPRAISAL. (a) Before a river authority may acquire property under Section 152.202(2) through the exchange of revenue bonds, notes, or other obligations, the authority must obtain a written appraisal of the property by an independent appraiser certifying that the property has a value equal to or greater than the par value of the bonds, notes, or other obligations.

(b) The river authority shall:

(1) maintain the appraisal on file as a public record; and

(2) file a copy of the appraisal with the Texas Commission on Environmental Quality.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 55, eff. Sept. 1, 2003.

SUBCHAPTER F. HEDGING TRANSACTIONS

Sec. 152.251. DEFINITION. In this subchapter, "hedging" means buying or selling crude oil, fuel oil, natural gas, or electric energy futures or options, or similar contracts on those commodity futures, as a protection against loss due to price fluctuations.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.252. AUTHORITY TO ENTER INTO HEDGING CONTRACT. (a) A river authority or a corporation created under Section 152.051 may enter into a hedging contract and related security and insurance agreements.

(b) A hedging transaction must comply with the regulations of the Commodity Futures Trading Commission and the Securities and Exchange Commission.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.253. PAYMENT CONSIDERED FUEL EXPENSE. A payment by a river authority or a corporation created under Section 152.051 under a hedging contract or related agreement in relation to fuel supplies or fuel reserves is a fuel expense. The authority or corporation may credit any amount it receives under the contract or agreement against fuel expenses.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.254. INVESTMENT OF MONEY IN HEDGING TRANSACTION. (a) Except as provided by Subsection (b), the board of directors of a

river authority may determine and designate the amount of money to be invested in a hedging transaction.

(b) The board of directors of the river authority by formal policy shall regulate the investment of money in hedging contracts. An investment may be made only for hedging purposes. The policy must provide restrictions and procedures for making an investment that a person of ordinary prudence, discretion, and intelligence, exercising the judgment and care under the circumstances then prevailing, would follow in the management of the person's own affairs, not in regard to speculation but in regard to the permanent disposition of the person's money, considering:

(1) the probable income; and

(2) the probable safety of the person's capital.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

Sec. 152.255. RECOVERABILITY OF COSTS FROM RATEPAYERS. This subchapter does not limit the authority of the Public Utility Commission of Texas to determine the recoverability of costs from ratepayers.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 26, eff. Sept. 1, 1999.

SUBCHAPTER G. ELECTRIC TRANSMISSION SERVICES AND FACILITIES OF RIVER AUTHORITY

Sec. 152.301. ELECTRIC TRANSMISSION SERVICES AND FACILITIES. Notwithstanding any other law, a river authority may:

(1) provide transmission services, as defined by the Utilities Code or the Public Utility Commission of Texas, on a regional basis to any eligible transmission customer at any location within or outside the boundaries of the river authority; and

(2) acquire, including by lease-purchase, lease from or to any person, finance, construct, rebuild, operate, or sell electric transmission facilities at any location within or outside the boundaries of the river authority.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 29, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.108(a), eff. Sept. 1, 2001.

Sec. 152.302. LIMITATION ON ELECTRIC TRANSMISSION FACILITIES. This subchapter does not:

(1) authorize a river authority to construct electric transmission facilities for an ultimate consumer of electricity to enable that consumer to bypass the transmission or distribution facilities of its existing provider; or

(2) relieve a river authority from an obligation to comply with each provision of the Utilities Code concerning a certificate of convenience and necessity for a transmission facility.

Added by Acts 1999, 76th Leg., ch. 1064, Sec. 29, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.108(a), eff. Sept. 1, 2001.